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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

17 JON MCMILLEN, CHRISTINA) Case No. 2:15-cv-07615
18 MCMILLEN, MARK MCMILLEN,)
19 RALPH MCMILLEN, WAHAB)
20 KHAN, MARC GUSTAFSON and)
21 PETER LEVITT, Individually and on)
22 Behalf of All Others Similarly Situated,)
23 Plaintiffs,)
24 vs.)
25 VOLKSWAGEN AG, VOLKSWAGEN)
GROUP OF AMERICA, INC.,)
MARTIN WINTERKORN, MICHAEL)
HORN, Individually and DOES 1-25,)
Defendants.)
DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

1 Plaintiffs Jon and Christina McMillen, Mark McMillen, Ralph McMillen,
2 Wahab Khan, Marc Gustafson, and Peter Levitt (“Plaintiffs”), by and through their
3 attorneys, brings this action on behalf of themselves, and all others similarly situated,
4 against Defendants Volkswagen AG (“VW AG”), Volkswagen Group of America,
5 Inc. (“VW America”) (collectively “VW”), Martin Winterkorn (“Winterkorn”), and
6 Michael Horn (“Horn”) (collectively, “Defendants” or “Volkswagen”). Plaintiffs
7 allege the following based upon information and belief, the investigation of counsel,
8 and personal knowledge as to the allegations pertaining to themselves.
9

10

11 INTRODUCTION

12

13 1. This nationwide consumer class action arises out of Volkswagen’s
14 brazenly fraudulent scheme to increase its market share by rigging smog tests.
15 Specifically, Volkswagen marketed its 2009-2015 diesel vehicles as “green” and
16 “clean,” yet they were anything but. And to avoid detection, Volkswagen deliberately
17 circumvented the Environmental Protection Agency (“EPA”) and state regulations
18 through software designed to hide the high amounts of pollution emitted from those
19 vehicles when it detected that the vehicle was undergoing smog tests.
20

22 2. Specifically, to perpetuate its scheme, Volkswagen installed defective
23 diesel engine systems containing a “defeat device” in approximately 500,000 vehicles
24 that were sold in the United States (the “Defective Vehicles”). This device was
25 designed specifically to allow the Defective Vehicles to spew pollutants while in
26 normal operation, and to manipulate engine performance when it detects testing to
27

1 simulate compliance with emission standards. However, this compliance was only
2 possible during emissions testing, not in regular use.
3

4 3. Despite advertising its diesel vehicles as being low emission and
5 environmentally-friendly with high fuel economy and exceptional performance,
6 Volkswagen instead intentionally delivered Defective Vehicles that emitted up to 40
7 times more pollutants than allowed under EPA and California standards. But to avoid
8 detection, Volkswagen installed the defeat devices and, for years, enjoyed an
9 advantage over its competition by claiming innovations in low-emission technology
10 without sacrificing high fuel efficiency and performance.
11

12 4. Volkswagen's scheme worked – Volkswagen has become the world's top
13 automaker for the first half of 2015, and is now one of the largest sellers of diesel
14 passenger vehicles in the United States.¹ According to the Volkswagen website,
15 Volkswagen has sold more diesel cars in the United States than every other brand
16 combined.²
17

18 5. However, as a result of Volkswagen's fraudulent conduct and
19 misrepresentations, and the installation of the defective engine systems containing
20 illegal defeat devices, the Defective Vehicles emit far more toxic pollutants than
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25 ¹ <http://www.timesfreepress.com/news/business/aroundregion/story/2015/sep/21/volkswagen-stops-selling-2015-diesel-cars-20-liter-engines/326259/> (last visited on Sept. 28, 2015).

26
27 ² <http://www.vw.com/features/clean-diesel/> (last visited on Sept. 21, 2015).
28

1 disclosed by Volkswagen in its warranties and advertisements. In fact, “putting aside
2 the inevitable fines, possible criminal charges, and massive public disgrace, there are
3 half a million cars running an emissions setup that **never should’ve left the factory.**”³
4
5 And indeed, each of these Defective Vehicles is also illegal because Volkswagen did
6 not obtain a valid EPA certificate of conformity for importing them.
7

8 6. Plaintiffs and the Class were induced to purchase or lease illegal
9 Defective Vehicles and are now left with vehicles that violate the Clean Air Act and
10 state law, and do not (and cannot) perform as represented by Volkswagen or as
11 required by law. Plaintiffs have suffered damages in that they purchased and/or leased
12 Defective Vehicles that they would not have purchased and/or leased had they known
13 they were illegally imported and/or had defective engine systems that contained defeat
14 devices. Alternatively, Plaintiffs and the Class would not have paid as much for these
15 Defective Vehicles. Plaintiffs further suffer diminution in value of their Defective
16 Vehicles as the vehicles do not, and cannot, perform as advertised and are likely
17 subject to heightened maintenance requirements. Although Volkswagen is reportedly
18 initiating a recall of the Defective Vehicles, it will not be able to comply with EPA
19 emission standards without negatively impacting other vehicle specifications, such as
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26
27 ³ <http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/> (last visited on Sept. 28, 2015).
28

1 fuel economy and horsepower. Plaintiffs may suffer from increased fuel costs, and
 2 the Defective Vehicles will still not perform as advertised.
 3

4 7. Plaintiffs and the Class are consumers who purchased or leased a
 5 Defective Vehicle containing a defective Clean Diesel engine system with a defeat
 6 device, including but not limited to:
 7

<u>Year</u>	<u>Make & Model(s)</u>
2009	Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI
2010	Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, and Audi A3
2011	Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, and Audi A3
2012	Volkswagen Beetle TDI, Volkswagen Beetle Convertible TDI, Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, Audi A3, Volkswagen Passat TDI
2013	Volkswagen Beetle TDI, Volkswagen Beetle Convertible TDI, Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, Audi A3, Volkswagen Passat TDI
2014	Volkswagen Beetle TDI, Volkswagen Beetle Convertible TDI, Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, Audi A3, Volkswagen Passat TDI
2015	Volkswagen Beetle TDI, Volkswagen Beetle Convertible TDI, Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, Audi A3, Volkswagen Passat TDI, Volkswagen Golf SportWagen TDI

1 8. Plaintiffs, for themselves and all others similarly situated, hereby bring
2 this action under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C.
3 §1961 *et seq.* (“RICO”)); for fraud by concealment, breach of express and implied
4 warranties under the Uniform Commercial Code and Magnuson-Moss Warranty Act
5 (15 U.S.C. §2301 *et seq.* (“MMWA”)); and under various state consumer protection
6 and product liability statutes.

JURISDICTION AND VENUE

10 9. This Court has subject matter jurisdiction under 28 U.S.C. §1331,
11 because Plaintiffs' claims arise under the RICO Act, 18 U.S.C. §1962. The Court has
12 diversity jurisdiction because Plaintiffs and Defendants reside in different states. The
13 Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C.
14 §1337. This Court also has original jurisdiction over this lawsuit pursuant to 28
15 U.S.C. §1332(a)(1), as modified by the Class Action Fairness Act of 2005, because
16 Plaintiffs and Volkswagen are citizens of different states; there are more than 100
17 members of the Class (as defined herein); the aggregate amount in controversy
18 exceeds \$5,000,000.00, exclusive of attorneys' fees, interest, and costs; and Class
19 Members reside across the United States. The citizenship of each party is fully
20 described below.

25 10. This Court has personal jurisdiction over Volkswagen because
26 Volkswagen has significant minimum contacts with this State, and intentionally
27 availed themselves of the laws of California by conducting a substantial amount of
28

1 business throughout the State of California and this District and because Volkswagen
2 committed the acts and omissions complained of herein, in part, in the State of
3 California and this District.

5 11. Venue is proper in this Court under 28 U.S.C. §1391, because:
6
7 (i) Defendants conduct substantial business in this District and have intentionally
8 availed themselves of the laws and markets of the United States and this District;
9 and/or (ii) many of the acts and transactions giving rise to this action occurred in this
10 District, including, *inter alia*, Defendants' promotion, marketing, distribution and sale
11 of the Defective Vehicles in this District. Volkswagen sells a substantial amount of
12 automobiles in this District, has dealerships in this District, operates a major emissions
13 testing facility in this District, and much of the misconduct occurred in this District.
14
15 Venue is also proper under 18 U.S.C. §1965(a), because Volkswagen is subject to
16 personal jurisdiction in this District, and Defendants have agents located in this
17 District.
18

PARTIES

A. Plaintiffs

1. California Plaintiffs

23 12. California Plaintiffs Jon and Christina McMillen (“California Plaintiffs”)
24 purchased a 2012 Golf TDI in October, 2014 from Mossy Volkswagen of Escondido,
25 California.

1 13. California Plaintiffs chose to purchase this diesel vehicle because it was
2 marketed as environmentally friendly, and they relied on the vehicle specifications
3 regarding emissions, fuel economy and horsepower.
4

5 14. California Plaintiffs were previous owners of Volkswagen vehicles that
6 left them satisfied and trusting of the Volkswagen brand, and believed Volkswagen's
7 assertions about their vehicle's quality to be accurate. Further, Plaintiffs Jon and
8 Christina McMillen had received glowing recommendations from a friend who also
9 owned a Golf TDI.
10

11 15. California Plaintiffs were also previously satisfied with their prior
12 ownership of Ford and General Motors brand diesel pickup trucks, which offered long
13 engine life, superior fuel economy and excellent engine power. Consistent with their
14 positive experiences with diesel, California Plaintiffs sought to support Clean Diesel
15 technology as a viable alternative to other gas and hybrid options.
16

17 16. California Plaintiffs relied on the representations of Volkswagen
18 regarding pollution emissions when deciding to purchase this specific vehicle, and, at
19 the time California Plaintiffs purchased their vehicle, they did not have knowledge of
20 the defective engine system containing the defeat device.
21

22 17. California Plaintiffs would not have purchased their vehicle had they
23 been aware that the "defeat devices" had been installed in these Defective Vehicles,
24 and/or that the Defective Vehicles did not comply with the advertised specifications
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1 regarding pollution emissions, fuel economy, and were not as environmentally
2 friendly as represented.
3

4 18. Alternately, California Plaintiffs would have paid substantially less for
5 their vehicle.

6 19. California Plaintiffs are now stuck with a Defective Vehicle that is not
7 remotely as environmentally friendly as represented, and contains a defeat device
8 rendering its Clean Diesel engine system defective and allowing up to 40 times more
9 pollution than allowed by law. To make matters worse, if Volkswagen is able to fix
10 the emissions problem, it will likely do so by sacrificing the fuel economy,
11 horsepower, durability, and performance of California Plaintiffs' Defective Vehicle,
12 which California Plaintiffs deemed absolutely critical in their purchasing decision.
13

14 20. California Plaintiffs feel particularly betrayed by Volkswagen, as they
15 promoted Volkswagen vehicles to their family and friends, many of whom relied on
16 California Plaintiffs' advice and purchased other Defective Vehicles. Instead of
17 supporting diesel as an environmentally friendly automotive technology, California
18 Plaintiffs now reasonably fear that Volkswagen has permanently destroyed consumer
19 confidence in diesel technology and destroyed the potential for this fuel source.
20

21 **2. Colorado Plaintiff**

22 21. Colorado Plaintiff Mark McMillen ("Colorado Plaintiff") purchased a
23 2013 Volkswagen Golf TDI in November, 2012 from Bob Penhus Volkswagen of
24 Colorado Springs, Colorado.
25

1 22. Colorado Plaintiff chose to purchase a diesel vehicle because it was
2 marketed as environmentally friendly, had a turbo-charged engine capable of handling
3 the rugged terrain in Colorado, and he relied on the vehicle specifications regarding
4 fuel economy, durability, and performance. Maintaining a small environmental
5 footprint was a critical factor in Colorado Plaintiff's purchase.
6

7 23. Colorado Plaintiff trusted Volkswagen and appreciated the vehicle as an
8 ideal cross between efficiency and performance; so much so that Colorado Plaintiff's
9 wife ordered a 2016 Golf TDI, which has been delayed subsequent to the revelation of
10 Volkswagen's fraud.
11

13 24. When Colorado Plaintiff purchased his vehicle, he believed that the
14 vehicle complied with all specifications disclosed and advertised to him by
15 Volkswagen.
16

17 25. Colorado Plaintiff would not have purchased this vehicle had he been
18 aware that the "defeat devices" had been installed in these Defective Vehicles, and/or
19 that the Defective Vehicles did not comply with the advertised specifications
20 regarding pollution emissions, fuel economy, and were not as environmentally
21 friendly as represented.
22

24 26. Alternatively, Colorado Plaintiff would have paid substantially less for
25 his vehicle.
26

27 27. Colorado Plaintiff is now left with a vehicle that is not remotely as
28 environmentally friendly as represented, and contains a defeat device rendering its

1 Clean Diesel engine system defective and allowing up to 40 times more pollution than
2 allowed by law. To make matters worse, if Volkswagen is able to fix the emissions
3 problem, it will likely do so by sacrificing the fuel economy, horsepower and
4 performance of Colorado Plaintiff's vehicle. Colorado Plaintiff's vehicle will likely
5 have dramatically reduced resale value, as well.
6

7 28. Colorado Plaintiff feels particularly betrayed by Volkswagen, as
8 Colorado Plaintiff promoted Volkswagen vehicles to his family and friends, some of
9 whom relied on Colorado Plaintiff's advice and purchased other Defective Vehicles
10

11 **3. Illinois Plaintiff**

12 29. Illinois Plaintiff Wahab Khan ("Illinois Plaintiff") purchased a 2015
13 Volkswagen Passat TDI in June, 2014 from Bill Jacobs Volkswagen of Naperville,
14 Illinois.

15 30. Illinois Plaintiff chose to purchase a diesel vehicle because they were
16 marketed as environmentally friendly, and he relied on the vehicle specifications
17 regarding fuel economy, durability, and performance.

18 31. When Illinois Plaintiff purchased his vehicle, he believed that the
19 vehicles complied with all specifications disclosed and advertised to him by
20 Volkswagen.

21 32. Illinois Plaintiff would not have purchased this vehicle had he been aware
22 that the "defeat devices" had been installed in these Defective Vehicles, and/or that
23 the Defective Vehicles did not comply with the advertised specifications regarding
24

1 pollution emissions, fuel economy, and were not as environmentally friendly as
2 represented.

3 33. Alternatively, Illinois Plaintiff would have paid substantially less for his
4 vehicle.

5 34. Illinois Plaintiff is now left with a vehicle that is not remotely as
6 environmentally friendly as represented, and contains a defeat device rendering its
7 Clean Diesel engine system defective and allowing up to 40 times more pollution than
8 allowed by law. To make matters worse, if Volkswagen is able to fix the emissions
9 problem, it will likely do so by sacrificing the fuel economy, horsepower and
10 performance of Illinois Plaintiff's vehicle.

11 **4. New Mexico Plaintiff**

12 35. New Mexico Plaintiff Ralph McMillen ("New Mexico Plaintiff")
13 purchased a 2014 Volkswagen Jetta SportWagen TDI in November, 2013 at Al Serra
14 Volkswagen of Colorado Springs, Colorado.

15 36. New Mexico Plaintiff chose to purchase a diesel vehicle because it was
16 marketed as environmentally friendly, and he relied on the vehicle specifications
17 regarding fuel economy, durability, and performance.

18 37. New Mexico Plaintiff was notified at the time of purchase that the
19 vehicle would get great fuel mileage, and that Volkswagen vehicles can sometimes
20 exceed their own listed mpg estimates.
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1 38. New Mexico Plaintiff trusted Volkswagen and admired the dependability
2 of their vehicles; so much so that the 2014 Volkswagen Jetta SportWagen TDI was his
3 fifth Volkswagen purchase.
4

5 39. When New Mexico Plaintiff purchased his vehicle, he believed that the
6 vehicle complied with all specifications disclosed and advertised to him by
7 Volkswagen.
8

9 40. New Mexico Plaintiff would not have purchased this vehicle had he been
10 aware that the “defeat devices” had been installed in these Defective Vehicles, and/or
11 that the Defective Vehicles did not comply with the advertised specifications
12 regarding pollution emissions, fuel economy, and were not as environmentally
13 friendly as represented.
14

15 41. Alternatively, New Mexico Plaintiff would have paid substantially less
16 for his vehicle.
17

18 42. New Mexico Plaintiff is now left with a vehicle that is not remotely as
19 environmentally friendly as represented, and contains a defeat device rendering its
20 Clean Diesel engine system defective and allowing up to 40 times more pollution than
21 allowed by law. To make matters worse, if Volkswagen is able to fix the emissions
22 problem, it will likely do so by sacrificing the fuel economy, horsepower and
23 performance of New Mexico Plaintiff’s vehicle.
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1 **5. North Carolina Plaintiff**

2 43. North Carolina Plaintiff Marc Gustafson (“Plaintiff Gustafson” or “North
3 Carolina Plaintiff”) leased a 2012 Jetta TDI in January, 2012 from Frema Motors in
4 Goldsboro, North Carolina for three years. North Carolina Plaintiff subsequently
5 purchased the vehicle after the lease expired in January, 2015.

6
7 44. North Carolina Plaintiff chose to purchase his Defective Vehicle
8 primarily due to the purported reduced environmental impact of the diesel engine and
9 the higher resale value of diesel vehicles due to their slower depreciation.
10

11
12 45. North Carolina Plaintiff relied on the representations of Volkswagen
13 regarding pollution emissions when deciding to purchase these specific vehicles, and,
14 at the time North Carolina Plaintiff purchased his vehicle, he did not have knowledge
15 of the defective engine system containing the defeat device.
16

17
18 46. When North Carolina Plaintiff purchased his vehicle, he believed that the
19 vehicle complied with all specifications disclosed and advertised to him by
20 Volkswagen.
21

22
23 47. North Carolina Plaintiff would not have purchased this vehicle had he
24 been aware that the “defeat devices” had been installed in these Defective Vehicles,
25 and/or that the Defective Vehicles did not comply with the advertised specifications
26 regarding pollution emissions, fuel economy, and were not as environmentally
27 friendly as represented.
28

1 48. Alternatively, North Carolina Plaintiff would have paid substantially less
2 for his vehicle.
3

4 49. North Carolina Plaintiff is now left with a vehicle that is not remotely as
5 environmentally friendly as represented, and contains a defeat device rendering its
6 Clean Diesel engine system defective and allowing up to 40 times more pollution than
7 allowed by law. To make matters worse, if Volkswagen is able to fix the emissions
8 problem, it will likely do so by sacrificing the fuel economy, horsepower and
10 performance of Plaintiff Gustafson's vehicle.

11 **6. Pennsylvania Plaintiff**

12 50. Plaintiff Peter Levitt ("Plaintiff Levitt" or "Pennsylvania Plaintiff")
13 purchased a 2013 Volkswagen Passat TDI in November, 2012, and a 2011
14 Volkswagen Jetta in August, 2011 at Fred Beans Volkswagen in Devon,
15 Pennsylvania.
16

18 51. Pennsylvania Plaintiff chose to purchase these diesel vehicles because
19 they were marketed as environmentally friendly, and he relied on the vehicles'
20 specifications regarding emissions, fuel economy and horsepower.
21

22 52. Prior to purchasing the Defective Vehicles, Pennsylvania Plaintiff owned
23 a Toyota Prius which he bought because it was environmentally friendly and had
24 excellent fuel-economy. After seven years, Pennsylvania Plaintiff wanted to purchase
25 another environmentally friendly car with great fuel economy and saw Volkswagen's
26 advertisements regarding its "Clean Diesel" technology, and decided to purchase a
27
28

1 2011 Jetta TDI in reliance of the representations that the vehicle was environmentally
2 friendly.
3

4 53. After owning the Jetta for several years, Pennsylvania Plaintiff purchased
5 a 2013 Volkswagen Passat TDI in November of 2012 relying on Volkswagen's
6 representations regarding its Clean Diesel technology, fuel economy, and eco-friendly
7 cars.
8

9 54. Pennsylvania Plaintiff relied on the representations of Volkswagen
10 regarding pollution emissions when deciding to purchase these specific vehicles, and,
11 at the time Pennsylvania Plaintiff purchased his vehicles, he did not have knowledge
12 of the defective engine system containing the defeat device.
13

14 55. When Pennsylvania Plaintiff purchased his vehicles, he believed that the
15 vehicles complied with all specifications disclosed and advertised to him by
16 Volkswagen.
17

18 56. Pennsylvania Plaintiff would not have purchased these vehicles had he
19 been aware that the "defeat devices" had been installed in these Defective Vehicles,
20 and/or that the Defective Vehicles did not comply with the advertised specifications
21 regarding pollution emissions, fuel economy, and were not as environmentally
22 friendly as represented.
23

24 57. Alternatively, Pennsylvania Plaintiff would have paid substantially less
25 for his vehicle.
26
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1 58. Pennsylvania Plaintiff is now left with two vehicles that are not remotely
2 as environmentally friendly as represented, and contain a defeat device rendering its
3 Clean Diesel engine system defective and allowing up to 40 times more pollution than
4 allowed by law. To make matters worse, if Volkswagen is able to fix the emissions
5 problem, it will likely do so by sacrificing the fuel economy, horsepower and
6 performance of Pennsylvania Plaintiff's vehicles.
7
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9 **B. Defendants**

10 59. Defendant Volkswagen AG ("VW AG") is a German corporation and the
11 parent company of VW America. VW AG's headquarters and principal place of
12 business are located in Wolfsburg, Germany. Volkswagen conducts substantial
13 business in the United States and in this District, including its control of VW America;
14 its development and procuring manufacturing plants, including in Chattanooga,
15 Tennessee; its network of dealerships; and its distribution for sale of hundreds of
16 thousands of Defective Vehicles across the United States and in this District.
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19 60. Defendant Volkswagen Group of America, Inc. ("VW America") is a
20 corporation doing business in all 50 states (and the District of Columbia), and is
21 organized under the laws of the State of New Jersey, with its principal place of
22 business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171.
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24

25 61. VW America operates a test center located in this District at 201 Del
26 Norte Blvd. in Oxnard, California, which holds Volkswagen's largest emissions
27 compliance laboratory and vehicle test center outside of Germany. Upon information
28

1 and belief, Volkswagen's testing and implementation of their defeat devices and
 2 fraudulent scheme were carried out, at least in part, by and through the test center here
 3 in Oxnard, California.⁴
 4

5 62. At all times relevant to this action, Volkswagen manufactured,
 6 distributed, sold, leased, and warranted the Defective Vehicles under the Volkswagen
 7 and Audi brand names throughout the United States. Volkswagen and/or its agents
 8 designed, manufactured, and installed the engine systems in the Defective Vehicles,
 9 which included the defeat device. Volkswagen also developed and disseminated the
 10 owner's manuals and warranty booklets, advertisements, and other promotional
 11 materials relating to the Defective Vehicles.
 12
 13

14 63. Defendant Martin Winterkorn ("Winterkorn") is a resident of Germany.
 15 Winterkorn was CEO of VW AG until he resigned on September 23, 2015, in the
 16 wake of the diesel emissions scandal. Notably, Winterkorn was widely regarded as a
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 18

19
 20 ⁴ When first opened, the test center was touted as the location where Volkswagen
 21 would "conduct research and development for improving reliability, reducing
 22 emissions, **and meeting federal standards for Volkswagen's dalliance in clean**
diesels, hybrids, and even fuel cell vehicles." See
 23 [http://www.automotive.com/news/we-tour-volkswagens-27-million-research-](http://www.automotive.com/news/we-tour-volkswagens-27-million-research-development-center-in-oxnard-california-108001/)
 24 [development-center-in-oxnard-california-108001/](http://www.automotive.com/news/we-tour-volkswagens-27-million-research-development-center-in-oxnard-california-108001/) (last visited on Sept. 28, 2015).
 25 Further, "VW's top brass also expect to use the facility as a **lead site for integrating**
engine development — with its tough emissions requirements — into the rest of the
 26 production process." See <http://www.pacbiztimes.com/2012/08/20/vw-unveils-27m-testing-facility-in-oxnard/> (last visited on Sept. 28, 2015). Finally, automotive expert
 27 Ken Ambrose stated, when asked if the test center will perform diesel testing, stated
 28 that "**VW will continue to make advancement in diesel technology and the TCC will be at the forefront.** I confirmed that product planners are looking into diesel options on future models, beyond the vehicles that are currently fitted with TDI® Clean Diesel engines." See <http://kenambroseblog.com/engineers-at-new-test-center-california-begin-work/> (last visited on Sept. 28, 2015).

1 detail-oriented, micromanaging CEO, who “retained control over engineering details
2 that many other CEOs would relinquish fully to deputies.”⁵ Winterkorn is reportedly
3 being investigated by the German government for allegations of fraud.⁶ Winterkorn
4 has availed himself of the laws of the United States through his management and
5 control over VW America and the manufacture and distribution of hundreds of
6 thousands of Defective Vehicles imported and sold across the United States and in this
7 District.

10 64. Defendant Michael Horn (“Horn”) is a resident of Virginia. Horn is
11 President and CEO of VW America. VW AG reorganized VW America’s activities
12 on September 25, 2015, reportedly putting Prof. Dr. Winfried Vahlan in charge of
13 Volkswagen’s activities in North America, while allowing Horn to keep his job,
14 despite media reports that he was being ousted in the wake of the scandal.⁷

17 65. Defendant Does 1-25 are other persons or entities involved in the design,
18 manufacture, sale, distribution and marketing of the Defective Vehicles.
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24 ⁵ [http://www.usatoday.com/story/money/cars/2015/09/23/volkswagen-emissions-](http://www.usatoday.com/story/money/cars/2015/09/23/volkswagen-emissions-scandal-martin-winterkorn/72673028/)
25 [scandal-martin-winterkorn/72673028/](#) (last visited on Sept. 28, 2015).

26 ⁶ [http://www.reuters.com/article/2015/09/28/us-volkswagen-emissions-](http://www.reuters.com/article/2015/09/28/us-volkswagen-emissions-idUSKCN0RP14U20150928)
[idUSKCN0RP14U20150928](#) (last visited on Sept. 28, 2015).

27 ⁷ <https://media.vw.com/release/1074/> (last visited on Sept. 25, 2015).

1 COMMON FACTUAL ALLEGATIONS

2 A. The Scheme Is Hatched for VW's Diesel Engines

3 66. Many may view diesel engines as a relic of the past, where vehicles
4 would emit thick, toxic smoke full of dangerous and destructive pollutants. However,
5 diesel technology has reportedly improved so significantly that it is now viewed as a
6 "green" alternative to the standard gasoline automobile, oftentimes grouped with
7 electric and hydrogen cell vehicles.⁸

8 67. Diesel vehicles use diesel fuel instead of standard gasoline, and ignite the
9 fuel through a combination of high temperatures and high compression within the
10 engine, as opposed to a spark ignition in the typical automobile engine. Diesel fuel is
11 traditionally much denser than gasoline, and the high density fuel mixed with higher
12 operating temperatures tends to produce a more efficient vehicle; gasoline engines are
13 typically 30% efficient at converting fuel into energy, while diesel engines can
14 convert well over 45% of fuel energy into useful mechanical energy.⁹

15 68. Diesel engines exist in a state of balance between rich and lean states. A
16 diesel engine in a rich state contains more fuel than air, which tends to produce higher
17 amounts of pollutant soot and reduced fuel efficiency. On the other hand, the lean
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⁸ <http://www.fool.com/investing/general/2015/02/22/clean-diesel-hydrogen-fuel-cell-or-electric-volksw.aspx> (last visited on Sept. 28, 2015).

⁹ http://www1.eere.energy.gov/vehiclesandfuels/pdfs/basics/jtb_diesel_engine.pdf (last visited on Sept. 28, 2015).

1 state contains more air than fuel and produces higher amounts of NO_X.¹⁰ Neither of
2 these discharges are desirable, as soot is rich in hazardous hydrocarbons and
3 dangerous to lungs, while NO_X has a particularly destructive effect on the ozone layer.
4

5 69. In order for the EPA to designate a diesel automobile as a “clean”
6 vehicle, it must produce both low soot, and low NO_X. Since achieving that is a
7 difficult feat, significant engineering and innovation is required to achieve a clean
8 rating. Typically, this involves running the diesel engine in a highly compressed, lean
9 state to maximize fuel efficiency, countering soot production with diesel particulate
10 filters, and controlling the NO_X by either using NO_X traps or injecting a special urea
11 fluid to reduce NO_X emissions. Volkswagen claimed to have achieved this
12 engineering feat to the satisfaction of the EPA, while wrapping it in a fun, affordable,
13 high performance package that seemed to offer the best of all worlds for consumers.
14

15 **B. Volkswagen’s Dirty “Clean Diesel” Advertising Campaign**

16 70. Much of Volkswagen’s success in the diesel market has been tied to its
17 advertisement of its vehicles as eco-conscious vehicles. In fact, Volkswagen itself
18 refers to the Defective Vehicles as “clean diesel vehicles” and was engaging in broad
19 campaigns to “get clean-diesel power the recognition it deserves as a true “green”
20 technology.”¹¹
21

22 26 ¹⁰ NO_X is a generic term for nitrous oxides. They are produced from the reaction of
23 nitrogen and oxygen gases in the air during combustion.
24

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26 27 ¹¹ <http://media.vw.com/release/617> (last visited on Sept. 28, 2015).
27

1 71. Volkswagen wanted to drive home this “clean” and environmentally
2 friendly concept so much so that they included the term “Clean Diesel” in the name of
3 the Defective Vehicles.
4

5 72. Volkswagen was on a mission to change the way consumers thought of
6 diesel and remove the mental image of sulfur emissions amid clouds of thick soot and
7 instead tout the heightened efficiency and reduced CO₂ emissions. In fact, the
8 Volkswagen website states: “This ain’t your daddy’s diesel. Stinky, smoky, and
9 sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-
10 low-sulfur fuel, direct injection technology, and extreme efficiency. We’ve ushered in
11 a new era of diesel.”¹²
12

13 73. Through a national advertising campaign, Volkswagen touted that “Clean
14 diesel delivers more torque, lower fuel consumption and reduces CO₂ emissions
15 compared with equivalent gasoline engines.”¹³ In fact, this advertising even
16 culminated in a Guinness World Record attempt, winning the award for “lowest fuel
17 consumption – 48 U.S. states for a non-hybrid car” while driving a 2013 Volkswagen
18 Passat TDI.¹⁴
19

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23
24 ¹² <https://www.vw.com/content/vwcom/es/features/clean-diesel.html> (last visited
25 Sept. 21, 2015).

26 ¹³ http://www.volkswagengroupamerica.com/clean_diesel_tdi.html (last visited on
27 Sept. 21, 2015).

28 ¹⁴ <http://www.autotrader.com/car-news/volkswagen-passat-tdi-sets-world-record-for-fuel-economy-210689> (last visited on Sept. 28, 2015).

1 74. The following are examples of Volkswagen's advertising campaign

2

3 **This ain't your daddy's**
4 **diesel.**

5 Stinky, smoky, and sluggish. Those old diesel realities no
6 longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel,
7 direct injection technology, and extreme efficiency.¹ We've
8 ushered in a new era of diesel.

9

- 10 • Engineered to burn low-sulfur diesel fuel
- 11 • "Common Rail" direct injection system

12 View key fuel efficiency info [?](#)



13

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With reduced emissions.

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These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet some of the strictest standards in the world. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle.¹

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 Watch and learn about TDI® Clean Diesel

A little fuel
goes a long way.



TDI
Clean Diesel



Combining legendary performance and fuel economy, the TDI Clean Diesel is our least thirsty engine yet, delivering up to 1,235 kilometres (highway) per tank on models like the Touareg and Passat.¹⁵

Come test drive one today.


Das Auto.

75. While secretly engaging in fraudulent conduct, evading regulators, and concealing from the public that the Defective Vehicles emitted up to 40 times the amount of pollution allowed under applicable law (or that was detected in smog testing), Volkswagen stated: “The Volkswagen Group is a leader in clean diesel technology” and “[w]ith the introduction of the new EA288 engine, we are excited that our family of TDI Clean Diesel vehicles is continuing to improve and will be even more clean, fuel efficient and powerful.”¹⁵

¹⁵ <http://media.vw.com/release/495> (last visited on Sept. 28, 2015).

1 76. One advertisement for the Audi A3 depicts Kermit the Frog saying “it’s
 2 not that easy being green,” where celebrity Joel McHale responds “[i]t is now” while
 3 referring to the Audi A3.¹⁶
 4

5 77. This advertising proved successful, as Volkswagen took a commanding
 6 lead in U.S. diesel sales and was even profiled in many environmental websites and
 7 blogs as a preferred vehicle choice, relying on Volkswagen’s representations of high
 8 mileage and low diesel emissions.¹⁷ In fact, many of the Defective Vehicles were
 9 deemed eligible for federal income tax credits to spur the sale of “clean diesel”
 10 technology, and at least \$78 million was earmarked for the first run of diesel Jetta
 11 buyers in 2009 and 2010.¹⁸
 12

13 78. However, while touting that it was committed to making eco-conscious
 14 vehicles and referring to its diesel vehicles as “Clean Diesel,” Volkswagen concealed
 15 that the engine system contained a defect that intentionally allowed the Defective
 16 Vehicles to emit much more pollution than allowed by law or disclosed to the public.
 17

18 79. In fact, even after the truth about Volkswagen’s Clean Diesel cars has
 19 been revealed, Volkswagen had the audacity to maintain their webpage which states
 20

21 ¹⁶ https://adsoftheworld.com/media/tv/audi_67th_primetime_emmy_awards_kermit_gets_set_up (last visited on Sept. 28, 2015).

22 ¹⁷ See, e.g., <http://www.mnn.com/green-tech/transportation/blogs/clean-diesel-what-you-need-to-know>; http://www.greencarreports.com/news/1090957_2015-vw-golf-beetle-passat-jetta-all-get-new-clean-diesel-engine (last visited on Sept. 28, 2015).

23 ¹⁸ <https://finance.yahoo.com/news/volkswagen-shares-plunge-most-six-071319964.html> (last visited on Sept. 28, 2015).
 24

1 that, among other things, “Our commitment to making vehicles that are eco-conscious
2 is part of bigger thinking.”¹⁹
3

4 **C. The EPA Discovers Volkswagen’s Fraudulent Conduct**

5 80. The EPA administers a certification program to ensure that every vehicle
6 introduced into United States commerce satisfies applicable emissions standards, and
7 issues certificates of conformity to vehicles that satisfy the emission standards for
8 certain pollutants.
9

10 81. In order to obtain a certificate of conformity and thereby be allowed to
11 introduce a vehicle into United States commerce, a vehicle manufacturer, such as
12 Volkswagen, must submit an application to the EPA that includes a list of all auxiliary
13 emission control devices installed on the vehicles, a justification for each, and a
14 rationale for why the control device is not a defeat device.
15

16 82. A defeat device is defined as an auxiliary emission control device “that
17 reduces the effectiveness of the emission control system under conditions which may
18 reasonably be expected to be encountered in normal vehicle operation.” 40 C.F.R.
19 §86.1803-01. Motor vehicles that contain such defeat devices cannot be certified.
20

21 83. Volkswagen, however, installed defective Clean Diesel engine systems
22 containing a defeat device in the Defective Vehicles, but did not disclose the presence
23 of the defective engine system or defeat device to the EPA or to the consuming public,
24

25
26 ¹⁹ <https://www.vw.com/content/vwcom/es/features/clean-diesel.html> (last visited on
27 Sept. 21, 2015).
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1 and instead, intentionally and fraudulently misrepresented the amount of emissions
2 released by the Defective Vehicles in normal vehicle operation. This enabled
3 Volkswagen to circumvent EPA regulation, fraudulently pass EPA tests, and then,
4 after detecting that the test was over, the engine would return to primary driving mode
5 and its grossly excessive NO_x emissions.
6

7 84. The certificates of conformity issued by the EPA for the Defective
8 Vehicles state: “this certificate covers only those new motor vehicles or vehicle
9 engines which conform, in all material respects, to the design specifications”
10 described in the application for the certificate of conformity.
11

12 85. Thus, because the defective engine systems and defeat devices were not
13 disclosed in Volkswagen’s application to the EPA or to the consuming public, the
14 Defective Vehicles are not covered by a valid certificate of conformity and are not
15 legally permitted to be introduced into U.S. commerce. Volkswagen hid this fact from
16 the EPA, from other government agencies, and from consumers, and have continued
17 to sell and/or lease the Defective Vehicles to the public.
18

19 86. On September 18, 2015, the EPA issued a Notice of Violation (the
20 “Violation Notice”) stating that Volkswagen violated §203(a)(3)(B) of the Clean Air
21 Act, 42 U.S.C. §7522(a)(3)(B) (the “CAA”), by manufacturing and installing “defeat
22 devices” in certain model year 2009-2015 diesel light engine vehicles that bypass,
23 defeat or render inoperative elements of the vehicles’ emission control systems.
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1 87. The Violation Notice noted that Congress' purpose in enacting the CAA
2 was, *inter alia*, "to protect and enhance the quality of the Nation's air resources so as
3 to promote the public health and welfare."²⁰ More specifically, "[t]he CAA and the
4 regulations promulgated thereunder aim to protect human health and the environment
5 by reducing emissions of nitrogen oxides (NOx) and other pollutants from mobile
6 sources of air pollution."²¹ The Violation Notice concluded that, in addition to
7 violating the CAA, the Defective Vehicles also failed to conform to the vehicle
8 specifications described by Volkswagen.

9
10
11 88. In an attempt to circumvent these laws, and gain profits from the sale
12 and/or lease of the Vehicles, Volkswagen manufactured and installed the Defective
13 Vehicles with defeat devices in the control module of the vehicles that sensed when
14 the vehicles were being tested for compliance with EPA emission standards. During
15 EPA emissions testing for the Defective Vehicles' certificates of compliance, the
16 device sensed that it was being tested by tracking the parameters of the federal test
17 procedure used for EPA emission testing, and fraudulently produced compliant
18 emission results.

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²⁰ <http://www3.epa.gov/otaq/cert/documents/vw-nov-caa-09-18-15.pdf> (last visited
26 on Sept. 28, 2015).

27 ²¹ *Id.*

1 89. To the detriment of the environment and the consuming public, these
2 emission results were not accurate for normal vehicle operation, and the vehicles are
3 “running an emissions setup that never should’ve left the factory.”²²
4

5 **D. Volkswagen Concealed the Defective Engine System and**
6 **Defeat Device from the Public for Years**

7 90. In May 2014, approximately 5 years after the first model year containing
8 the defective engine system (and defeat device) was introduced by Volkswagen, the
9 West Virginia University’s Center for Alternative Fuels, Engines & Emissions
10 published results of a study commissioned by the International Council on Clean
11 Transportation, which found that certain of the Defective Vehicles’ real world
12 nitrogen oxide and other pollutant emissions exceeded the allowable EPA emission
13 standards.
14

16 91. This study initially alerted the EPA and the California Air Resources
17 Board (“CARB”) to Volkswagen’s emissions problems.
18

19 92. However, despite its knowledge that the Defective Vehicles contained
20 defective engine systems (and defeat devices intentionally designed to comply with
21 emission standards while under EPA testing but not under normal driving conditions),
22 Volkswagen failed to disclose this fact to the EPA or the consuming public.
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27 ²² <http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/> (last visited on Sept. 28, 2015).
28

1 93. Instead, Volkswagen continued to withhold this information and asserted
2 that the increased emissions could be attributed to various technical issues and
3 unexpected in-use conditions.
4

5 94. In December 2014, Volkswagen issued a recall to update emission
6 control software, and CARB (along with the EPA) conducted follow up testing of the
7 Defective Vehicles both in the laboratory and in during normal road operation. CARB
8 attempted to pinpoint the exact technical nature of the Defective Vehicles' poor
9 performances and determine why the vehicles' on-board diagnostic system was not
10 detecting the increased emissions. None of the potential technical issues suggested by
11 Volkswagen adequately explained the higher test results confirmed by CARB.
12
13

14 95. While offering fabricated solutions, Volkswagen continued to remain
15 silent regarding its knowledge of the true source of the emission discrepancies:
16 Volkswagen's defective engine systems and defeat devices.
17
18

19 96. In fact, German newspapers are reporting that Volkswagen's knowledge
20 of the emission discrepancies can be traced back for many years. It has been reported
21 that Volkswagen was first alerted to the defeat device altering emissions as early as
22 2007, when Bosch (a company that supplies electronics to the automotive industry)
23 wrote a letter to Volkswagen warning them not to use the defeat device during regular
24 operation. Additionally, in 2011, a Volkswagen whistleblower alerted Volkswagen
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1 about “illegal practices in connection with emissions levels.”²³ Volkswagen chose to
2 suppress and/or ignore these repeated warnings, and continued to deceive the EPA,
3 CARB, and its customers.
4

5 97. It was only when CARB and the EPA threatened to withhold certificates
6 of conformity for Volkswagen’s 2016 model year vehicles until Volkswagen
7 explained the anomaly regarding the higher emissions, that Volkswagen finally came
8 clean.
9

10 98. Only in the face of these regulatory ultimatums did Volkswagen admit
11 that it had designed and installed defective engine systems that allowed the Defective
12 Vehicles to operate out of compliance with emission regulations in normal operation,
13 but contained a device which detected when a vehicle was undergoing emissions
14 testing and only operated in compliance with emission standards during such testing.
15
16

17 99. The defective engine system and defeat device hidden from the EPA and
18 consumers was designed by Volkswagen for the express purpose of tracking the
19 parameters of the federal test procedure and causing emission control systems to
20 underperform when the device determined that the vehicle was not undergoing an
21 emissions test procedure.
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26 27 ²³ <http://www.latimes.com/business/la-fi-volkswagen-warned-20150927-story.html>
28 (last visited on Sept. 28, 2015).

1 100. Volkswagen has now admitted that each of the Defective Vehicles
2 contains an illegal defeat device and do not conform to the specifications provided by
3 Volkswagen. The engine systems are defective and do not operate in accordance with
4 federal and state law, and do not operate as represented by Volkswagen.
5

6 101. The EPA investigation is ongoing and may lead to a finding of additional
7 violations and Defective Vehicles.
8

9 **E. Fallout from the Revelation of Volkswagen's Fraudulent
10 Scheme**

11 102. Immediately after the revelation of Volkswagen's fraud, Volkswagen
12 attempted to scrub their clean diesel advertisements from the internet, as those
13 advertisements served to highlight Volkswagen's fraud, such as holding white towels
14 to Defective Vehicle exhaust pipes to highlight the lack of "dirty" emissions.²⁴
15

16 103. In a carefully crafted public statement issued after the fraud was revealed,
17 VW AG CEO Martin Winterkorn did not accept responsibility, but instead stated that
18 he was "deeply sorry that we have broken the trust of our customers and the public."²⁵
19 Later, amidst global scrutiny, on September 23, 2015, VW AG CEO Martin
20 Winterkorn announced his resignation from VW AG.²⁶
21

22
23 ²⁴ <http://jalopnik.com/why-did-volkswagen-delete-all-of-its-diesel-ads-from-yo-1731691453> (last visited on Sept. 28, 2015).

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25 ²⁵ http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/statement_ceo_of_volkswagen_ag.html (last visited on Sept. 28, 2015).

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27 ²⁶ http://www.nytimes.com/2015/09/24/business/international/volkswagen-chief-martin-winterkorn-resigns-amid-emissions-scandal.html?_r=0 (last visited on Sept. 28, 2015).

1 104. Soon after CEO Winterkorn's public statement, Volkswagen's U.S. chief,
 2 Michael Horn, added: "Let's be clear about this: Our company was dishonest with the
 3 EPA and the California Air Resources Board and with all of you. In my German
 4 words, we have totally screwed up."²⁷

5 105. According to media reports, the U.S. Department of Justice has launched
 6 a criminal investigation into Volkswagen over the emissions cheating scandal.²⁸ The
 7 German government is also reportedly investigating Winterkorn for fraud.²⁹

8 106. Volkswagen has released a stop-sale order instructing dealers to
 9 immediately stop selling the Defective Vehicles.³⁰

10 107. Further, the scale and brazenness of the fraud prompted Volkswagen to
 11 set aside a 6.5 billion Euro fund to address affected consumers and the EPA.³¹

12 108. To remedy Volkswagen's violations, Volkswagen likely will need to
 13 recall the Defective Vehicles and configure them to settings that produce a clean level
 14 of soot and NO_X. In reconfiguring to this new setting, the efficiency, power, and
 15

16 27 http://www.washingtonpost.com/business/economy/vw-emissions-cheating-affects-11-million-cars-worldwide/2015/09/22/30f59bca-6126-11e5-9757-e49273f05f65_story.html?fhakfjksajflkajs (last visited on Sept. 28, 2015).

17 28 <http://www.wsj.com/articles/u-s-justice-department-conducts-criminal-probe-of-volkswagen-sources-say-1442869059> (last visited on Sept. 28, 2015).

18 29 <http://www.reuters.com/article/2015/09/28/us-volkswagen-emissions-idUSKCN0RP14U20150928> (last visited on Sept. 28, 2015).

19 30 <http://www.detroitnews.com/story/business/autos/foreign/2015/09/19/vw-us-dealers-halt-sales-diesel-cars/72488232/> (last visited on Sept. 28, 2015).

20 31 <http://www.bloomberg.com/news/articles/2015-09-22/volkswagen-ceo-s-history-of-sweating-the-details-now-haunts-him> (last visited on Sept. 28, 2015).

1 performance of the Defective Vehicles will decline dramatically. Further, there will
2 be serious degradation of vehicle durability, as these vehicles are designed to operate
3 under particular settings. Certain parameters such as exhaust gas temperature, oil life,
4 or engine/turbocharger RPMs will change and result in decreased durability as
5 Volkswagen attempts to undo the effects of their fraud.
6

7 109. As speculated by Karl Brauer, senior analyst for Kelley Blue Book: “It’s
8 really unknown, but I think there’ll be an extended period of reduced value for [used
9 Volkswagen vehicles]. The resolution will probably not leave as big of an impression
10 and won’t counteract the initial impression that [consumers] are getting with these
11 diesel cars.”³²
12

13 110. Unfortunately for affected consumers, one of the fundamental problems
14 with the Defective Vehicles is that they promised high performance, environmentally
15 friendly operation, and efficient fuel usage in a fun-to-drive vehicle. Plaintiffs and the
16 Class were induced to buy or lease the Defective Vehicles based on these claims, and
17 paid a premium for a diesel vehicle that had all of these traits. That car may exist, but
18 it was not the car Plaintiffs and the Class were defrauded into purchasing or leasing.
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26 32 <http://www.cnbc.com/2015/09/24/as-volkswagen-loses-other-automakers-could-benefit.html> (last visited on Sept. 28, 2015).
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28

CLASS ACTION ALLEGATIONS

111. Plaintiffs bring this action as a class action pursuant to Rule 23(a), (b)(2),
and (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all
others similarly situated as members of the Classes and Subclasses listed below.

F. The Nationwide Class

112. All persons or entities in the United States who are current or former owners/lessees of a “Defective Vehicle.” Defective Vehicles include: 2010-2015 Audi A3; 2012-2015 Volkswagen Beetle TDI and Volkswagen Beetle Convertible TDI; 2010-2015 Volkswagen Golf TDI; 2015 Volkswagen Golf SportWagen TDI; 2009-2015 Volkswagen Jetta TDI; 2009-2015 Volkswagen Jetta SportWagen TDI; and 2012-2015 Volkswagen Passat TDI. The Nationwide Class claims include Plaintiffs’ RICO claim and California state law claims alleged herein because the misconduct emanated, in part, from this state by and through the testing center in Oxnard.

G. The California Subclass

113. All persons or entities in the state of California who are current or former owners/lessees of a “Defective Vehicle.” Defective Vehicles include: 2010-2015 Audi A3; 2012-2015 Volkswagen Beetle TDI and Volkswagen Beetle Convertible TDI; 2010-2015 Volkswagen Golf TDI; 2015 Volkswagen Golf SportWagen TDI; 2009-2015 Volkswagen Jetta TDI; 2009-2015 Volkswagen Jetta SportWagen TDI; and 2012-2015 Volkswagen Passat TDI.

1 **H. The Colorado Subclass**

2 114. All persons or entities in the state of Colorado who are current or former
3 owners/lessees of a “Defective Vehicle.” Defective Vehicles include: 2010-2015
4 Audi A3; 2012-2015 Volkswagen Beetle TDI and Volkswagen Beetle Convertible
5 TDI; 2010-2015 Volkswagen Golf TDI; 2015 Volkswagen Golf SportWagen TDI;
6 2009-2015 Volkswagen Jetta TDI; 2009-2015 Volkswagen Jetta SportWagen TDI;
7 and 2012-2015 Volkswagen Passat TDI.
8

9 **I. The Illinois Subclass**

10 115. All persons or entities in the state of Illinois who are current or former
11 owners/lessees of a “Defective Vehicle.” Defective Vehicles include: 2010-2015
12 Audi A3; 2012-2015 Volkswagen Beetle TDI and Volkswagen Beetle Convertible
13 TDI; 2010-2015 Volkswagen Golf TDI; 2015 Volkswagen Golf SportWagen TDI;
14 2009-2015 Volkswagen Jetta TDI; 2009-2015 Volkswagen Jetta SportWagen TDI;
15 and 2012-2015 Volkswagen Passat TDI.
16

17 **J. The New Mexico Subclass**

18 116. All persons or entities in the state of New Mexico who are current or
19 former owners/lessees of a “Defective Vehicle.” Defective Vehicles include: 2010-
20 2015 Audi A3; 2012-2015 Volkswagen Beetle TDI and Volkswagen Beetle
21 Convertible TDI; 2010-2015 Volkswagen Golf TDI; 2015 Volkswagen Golf
22 SportWagen TDI; 2009-2015 Volkswagen Jetta TDI; 2009-2015 Volkswagen Jetta
23 SportWagen TDI; and 2012-2015 Volkswagen Passat TDI.
24

1 **K. The North Carolina Subclass**

2 117. All persons or entities in the state of North Carolina who are current or
3 former owners/lessees of a “Defective Vehicle.” Defective Vehicles include: 2010-
4 2015 Audi A3; 2012-2015 Volkswagen Beetle TDI and Volkswagen Beetle
5 Convertible TDI; 2010-2015 Volkswagen Golf TDI; 2015 Volkswagen Golf
6 SportWagen TDI; 2009-2015 Volkswagen Jetta TDI; 2009-2015 Volkswagen Jetta
7 SportWagen TDI; and 2012-2015 Volkswagen Passat TDI.
8

9 **L. The Pennsylvania Subclass**

10 118. All persons or entities in the state of Pennsylvania who are current or
11 former owners/lessees of a “Defective Vehicle.” Defective Vehicles include: 2010-
12 2015 Audi A3; 2012-2015 Volkswagen Beetle TDI and Volkswagen Beetle
13 Convertible TDI; 2010-2015 Volkswagen Golf TDI; 2015 Volkswagen Golf
14 SportWagen TDI; 2009-2015 Volkswagen Jetta TDI; 2009-2015 Volkswagen Jetta
15 SportWagen TDI; and 2012-2015 Volkswagen Passat TDI.
16

17 119. Specifically excluded from the proposed Class are individuals who have
18 personal injury claims resulting from the Defective Vehicles, Volkswagen, its officers,
19 directors, agents, trustees, parents, children, corporations, trusts, representatives,
20 employees, principals, servants, partners, and joint ventures, or entities controlled by
21 Volkswagen, and its heirs, successors, assigns, or other persons or entities related to or
22 affiliated with Volkswagen and/or its officers and/or directors, or any of them; any
23 judge assigned to this action, and any member of their immediate family. Subject to
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1 additional information obtained through further investigation and discovery, the
2 foregoing Class definition may be expanded or narrowed by amendment or amended
3 complaint. Plaintiffs expressly reserve the right to move for class certification of
4 different state Classes and Subclasses.

6 **120. Numerosity of the Class.** The members of the Class are so numerous
7 that their individual joinder is impracticable. Upon information and belief,
8 Volkswagen sold approximately 500,000 Defective Vehicles. Plaintiffs are informed
9 and believe that there are thousands of members in the Class. Inasmuch as the Class
10 members may be identified through business records regularly maintained by
11 Volkswagen and its employees and agents, and through the media, the number and
12 identities of Class members can be ascertained. Members of the Class can be notified
13 of the pending action by e-mail and mail and supplemented by published notice, if
14 necessary.

18 **121. Existence and Predominance of Common Question of Fact and Law.**
19 There are questions of law and fact common to the Class. These questions
20 predominate over any questions affecting only individual Class Members. These
21 common legal and factual issues include, but are not limited to:
22

24 a. whether Volkswagen engaged in the conduct alleged herein;
25 b. whether the Defective Vehicles contain a defective engine system
26 that does not comply with EPA emission standards;

- 1 c. whether the Defective Vehicles emit more pollution than represented
- 2 by Volkswagen;
- 3
- 4 d. whether the Defective Vehicles emit more pollution than allowed
- 5 under applicable state and federal law;
- 6
- 7 e. whether the Defective Vehicles can be made to comply with EPA
- 8 emission standards without sacrificing fuel efficiency or
- 9 performance;
- 10
- 11 f. whether the Defective Vehicles can be made to comply with
- 12 representations made by Volkswagen;
- 13
- 14 g. whether Volkswagen's representations regarding the Defective
- 15 Vehicles were materially misleading;
- 16
- 17 h. whether Volkswagen knew of the defective engine system and defeat
- 18 device in the Defective Vehicles, and if so, how long has Volkswagen
- 19 had this knowledge;
- 20
- 21 i. whether Volkswagen intentionally designed, manufactured, and
- 22 installed defective engine systems in the Defective Vehicles;
- 23
- 24 j. whether Plaintiffs and other Class Members overpaid for the
- 25 Defective Vehicles;
- 26
- 27 k. whether Volkswagen's conduct violates the laws as set forth in the
- 28 causes of action;

- l. whether Volkswagen's inevitable remedial measures reduce the utility, value, or performance of their Defective Vehicles;
- m. whether Plaintiffs and Class Members are entitled to equitable or injunctive relief; and
- n. whether Plaintiffs and Class Members are entitled to restitution or damages, and what is the proper measure of these damages.

122. Typicality. The claims of the representative Plaintiffs are typical of the claims of each member of the Class. Plaintiffs, like all other Class Members, have sustained damages arising from Volkswagen's violations of the laws, as alleged herein. The representative Plaintiffs and Class Members were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive pattern of misconduct engaged in by Volkswagen.

123. Adequacy. The representative Plaintiffs will fairly and adequately represent and protect the interests of the Class members and have retained counsel who are experienced and competent trial lawyers in complex litigation and class action litigation. There are no material conflicts between the claims of the representative Plaintiffs and the members of the Class that would make class certification inappropriate. Counsel for the Class will vigorously assert the claims of all Class Members.

124. Predominance and Superiority. This suit may be maintained as a class action under Federal Rule of Civil Procedure 23(b)(3) because questions of law and

1 fact common to the Class predominate over the questions affecting only individual
2 members of the Class, and a class action is superior to other available means for the
3 fair and efficient adjudication of this dispute. The damages suffered by individual
4 Class Members are small compared to the burden and expense of individual
5 prosecution of the complex and extensive litigation needed to address Volkswagen's
6 conduct. Further, it would be virtually impossible for Class Members to individually
7 redress effectively the wrongs done to them. Even if Class Members themselves
8 could afford such individual litigation, the court system could not. In addition,
9 individualized litigation increases the delay and expense to all parties and to the court
10 system resulting from complex legal and factual issues of the case. Individualized
11 litigation also presents a potential for inconsistent or contradictory judgments. By
12 contrast, the class action device presents far fewer management difficulties; allows the
13 hearing of claims which might otherwise go unaddressed because of the relative
14 expense of bringing individual lawsuits; and provides the benefits of single
15 adjudication, economies of scale, and comprehensive supervision by a single court.
16
17

125. Plaintiffs contemplate the eventual issuance of a notice to the proposed
126 Class Members setting forth the subject and nature of the instant action. Upon
127 information and belief, Volkswagen's own business records and electronic media can
128 be utilized for the contemplated notices. To the extent that any further notices may be
required, Plaintiffs would contemplate the use of additional media and/or mailings.

126. Additionally, this action is properly maintained as a class action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

a. without class certification and determination of declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of separate actions by individual members of the Class will create the risk of:

- i. inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the parties opposing the Class; or
- ii. adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

the parties opposing the Class have acted or refused to act on grounds generally applicable to each member of the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole; or

common questions of law and fact exist as to the members of the Class and predominate over any questions affecting only individual

1 members, and a class action is superior to other available methods of
2 the fair and efficient adjudication of the controversy, including
3 consideration of:

4

5 i. the interests of the members of the Class in individually
6 controlling the prosecution or defense of separate actions;

7 ii. the extent and nature of any litigation concerning
8 controversy already commenced by or against members of
9 the Class;

10 iii. the desirability or undesirability of concentrating the
11 litigation of the claims in the particular forum; and
12 iv. the difficulties likely to be encountered in the management
13 of a class action.

14

15

16

TOLLING OF THE STATUTE OF LIMITATIONS

17

A. Discovery Rule Tolling

18

19 127. Plaintiffs and members of the Class could not have discovered through
20 the exercise of reasonable diligence that Volkswagen was concealing and
21 misrepresenting the Defective Vehicles' emission specifications and that the Defective
22 Vehicles contained a defeat device rendering the Clean Diesel engine system defective
23 in violation of federal and state laws, within the time period of any applicable statutes
24 of limitation.

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1 128. Plaintiffs and the other Class Members did not know, and could not
2 reasonably discover, that Volkswagen intentionally failed to report information within
3 its knowledge to federal and state authorities, or consumers.
4

5 129. Likewise, a reasonable and diligent investigation could not have
6 disclosed that Volkswagen intentionally engaged in emissions deception and that it
7 concealed that information, which was discovered by Plaintiffs shortly before this
8 action was filed.
9

10 130. For years, Volkswagen concealed the defeat device contained in the
11 Defective Vehicles and maintained that the increased emissions from these vehicles
12 could be attributed to various technical issues and unexpected in-use conditions.
13

14 131. Only on or about September 3, 2015, when the EPA and CARB stated
15 that they would not approve Volkswagen's 2016 model year diesel vehicles until
16 Volkswagen could adequately explain the anomalous emissions, did Volkswagen
17 admit that Defective Vehicles contained defective clean diesel engine systems. The
18 allegations in this Complaint became known only in the wake of this announcement.
19
20

21 132. For these reasons, all applicable statutes of limitation have been tolled by
22 operation of the discovery rule with respect to claims as to all vehicles identified
23 herein.
24

25 **B. Fraudulent Concealment Tolling**

26 133. Throughout the time period relevant to this action, Volkswagen
27 concealed from Plaintiffs and the other Class Members the defects described herein.
28

1 Thus, all applicable statutes of limitation have also been tolled by Volkswagen's
2 knowing and active fraudulent concealment and denial of the facts alleged herein
3 throughout the time period relevant to this action.
4

5 134. Instead of disclosing its emissions scheme, or that the Clean Diesel
6 engine systems contained in the cars were defective and resulted in emissions from the
7 Defective Vehicles that were far worse than represented and violated federal and state
8 law, Volkswagen falsely represented that its vehicles complied with federal and state
9 emissions standards, and that it was a reputable manufacturer whose representations
10 could be trusted.
11

12 135. Volkswagen intentionally designed and installed the defeat device to
13 conceal the true amount of pollutants emitted by the Defective Vehicles, and withheld
14 this information for many years. Only when the EPA and CARB withheld approval of
15 Volkswagen's 2016 model year diesel vehicles until Volkswagen could adequately
16 explain the anomalous emissions, did Volkswagen admit that Defective Vehicles
17 contained defective clean diesel engine systems that emitted far more pollutants than
18 permitted under EPA standards and disclosed to the public.
19

20 136. Thus, the running of all applicable statutes of limitation have been
21 suspended with respect to any claims that Plaintiffs and the other Class Members have
22 incurred by virtue of the fraudulent concealment doctrine.
23
24
25
26
27
28

1 **C. Estoppel**

2 137. Volkswagen was under a continuous duty to disclose to Plaintiffs and the
3 other Class Members the true character, quality, and nature of the Defective Vehicles,
4 including facts that it knew about the Defective Vehicles' clean diesel engine systems
5 and pollutant emissions and the Defective Vehicles' failure to comply with federal and
6 state law.

7
8 138. Volkswagen was under a continuous duty to disclose to Plaintiffs and the
9 other Class Members the true character, quality, and nature of emissions from the
10 vehicles at issue, and of those vehicles' emissions systems, and of the compliance of
11 those systems with applicable federal and state law.

12
13 139. Volkswagen knowingly, affirmatively, and actively concealed the true
14 nature, quality, and character of the clean diesel engine systems, the emissions control
15 systems, and the emissions of the Defective Vehicles.

16
17 140. Although Volkswagen had the duty to disclose to Plaintiffs and Class
18 Members that it had engaged in the deception described herein and installed defective
19 clean diesel engine systems in the Defective Vehicles, Volkswagen chose to evade
20 federal and state emissions standards and intentionally misrepresented its lack of
21 compliance with federal and state law.

22
23 141. Thus, Volkswagen is estopped from relying on any statutes of limitations
24 in defense of this action.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (18 U.S.C. §§1962(c)-(d))

**(On Behalf of All Plaintiffs and the Nationwide Class Against
Defendants VW AG, Winterkorn, and Horn)**

142. Plaintiffs incorporate all allegations made herein.

143. This Count is against defendants VW AG, Winterkorn, and Horn.

10 144. This claim arises under 18 U.S.C. §§1962(c) and (d), which provides in
11 relevant part:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection . . . (c) of this section.

22 145. Volkswagen is the largest auto maker in the world by sales, and conducts
23 its business – legitimate and illegitimate – through various affiliates and subsidiaries,
24 each of which is a separate legal entity. At all relevant times, defendants VW AG,
25 Winterkorn, and Horn were “person[s],” as defined in 18 U.S.C. §1961(3), because
26 they were “capable of holding a legal or beneficial interest in property.”
27

1 146. In an effort to expand its global reach, market share, and standardization
2 of vehicle marketing and sales in the United States, VW AG formed VW America, a
3 New Jersey company headquartered in Virginia. VW AG has hiring and firing
4 authority over the executive officers of VW America, as well as oversight of VW
5 America's operations, and tight control over the design, manufacture, and testing of
6 the Defective Vehicles. At all times, VW America acted for or on behalf of VW AG
7 in undertaking the acts and/or omissions alleged herein.

8 147. VW America constitutes a RICO “enterprise” within the meaning of 18
9 U.S.C. §1961(4), through which VW AG and the other Defendants conducted the
10 pattern of racketeering activity, described herein. VW AG directed VW America to
11 engage in fraudulent activities that affected interstate commerce, including the design,
12 manufacture, testing, sale and distribution of the Defective Vehicles to consumers all
13 over the country. VW AG used VW America to manufacture and import the
14 Defective Vehicles into the United States with the defeat device, and VW America
15 operated the largest emissions testing center in this District – in Oxnard, California.
16 VW America’s separate legal status also facilitated the unlawful scheme and provided
17 a legal shield from liability for VW AG.

18 148. Alternatively, defendants VW AG, Winterkorn, Horn, and other
19 individuals and entities, including third parties, operated an association-in-fact
20 enterprise, which was formed for the purpose of manufacturing, selling and
21 distributing the Defective Vehicles, and through which they conducted a pattern of
22

1 racketeering activity, under 18 U.S.C. §1961(4). The enterprises alleged in this and
2 the previous paragraph are referred to collectively as the “Defective Vehicle
3 Enterprise.”
4

5 149. Defendants are employed by, and/or associated with, the Defective
6 Vehicle Enterprise.
7

8 150. Each participant in the Defective Vehicle Enterprise had a systematic
9 linkage to each other through corporate ties, contractual relationships, financial ties,
10 and continuing coordination of activities. Through the Defective Vehicle Enterprise,
11 Defendants and others engaged in consensual decision-making, and functioned as a
12 continuing unit for the common purpose of exacting revenues.
13

14 151. Defendants participated in the operation and management of the
15 Defective Vehicle Enterprise by directing its affairs, as described herein. While
16 Defendants participated in, and are members of, the Defective Vehicle Enterprise,
17 they have a separate existence from the Enterprise, including distinct offices, bank
18 accounts, officers, directors, employees, and financial statements.
19
20

21 152. The Defective Vehicle Enterprise was created and/or used as a tool to
22 carry out the elements of Defendants’ illicit scheme and pattern of racketeering
23 activity. The Defective Vehicle Enterprise has set structures and purposes beyond the
24 scope and commission of Defendants’ predicate acts and conspiracy to commit such
25 acts, and is separate and distinct from VW AG and the individual Defendants.
26
27

28

1 153. Defendants and the other members of the Defective Vehicle Enterprise
2 all had the common purpose to maximize revenues and increase their market share by
3 falsely advertising and selling the Defective Vehicles as “clean” diesel vehicles with
4 superior fuel efficiency and performance, which they knew or recklessly disregarded
5 as defective and designed illegally to circumvent laws in this country.
6

7 154. The Defective Vehicle Enterprise engaged in, and its activities affected,
8 interstate and foreign commerce by designing, manufacturing, marketing, and selling
9 the Defective Vehicles to hundreds of thousands of persons in the United States.
10

11 155. Defendants exerted substantial control over the Defective Vehicle
12 Enterprise, and participated in the conduct of the Enterprise’s affairs by:
13

14 (a) knowingly designing the Defective Vehicles with cheat software
15 and failing to correct or disable the defeat device when warned;
16

17 (b) knowingly manufacturing and importing Defective Vehicles that
18 emitted greater pollution than the legal limit;
19

20 (c) importing the Defective Vehicles without a valid EPA certificate
21 of conformity because the applications for such certificates were fraudulent;
22

23 (d) persisting in the manufacturing, distribution, and sale of the
24 Defective Vehicles even after questions were raised about the emissions testing and/or
25 once the rigging of the emissions testing became known;
26

27 (e) designing and distributing marketing materials that misrepresented
28 and concealed the defect in the vehicles;

(f) otherwise misrepresenting or concealing the defective nature of the Defective Vehicles from the public and regulators; and/or

(g) collecting revenues and profits from the sale of such products.

156. At all relevant times, Defendants knew of the ongoing scheme, were willing participants in it, and made money from it.

157. Defendants directed and controlled the ongoing organization necessary to implement the scheme at meetings and through communications of which Plaintiffs cannot fully know at present, because all such information lies in Defendants' and others' hands.

158. Defendants have committed, or aided and abetted, the commission of at least two predicate acts of racketeering activity (*i.e.*, violations of 18 U.S.C. §§1341 and 1343), within the past ten years. The multiple acts of racketeering activity which they did, or conspired to, or aided or abetted in the commission of, were related to each other, pose a threat of continued racketeering activity, and therefore constitute a “pattern of racketeering activity.” The racketeering activity was made possible by Defendants’ regular use of the facilities, services, distribution channels, and employees of the Defective Vehicle Enterprise.

159. Defendants' predicate acts of racketeering (18 U.S.C. §1961(1)) include,
but are not limited to:

(a) Mail Fraud: Defendants violated 18 U.S.C. §1341, by sending or receiving, or causing to be sent or received, materials via U.S. mail or commercial

1 interstate carriers for the purpose of executing the unlawful scheme to design,
2 manufacture, market, and sell the Defective Vehicles by means of false pretenses,
3 misrepresentations, promises, and omissions.
4

5 (b) Wire Fraud: Defendants violated 18 U.S.C. §1343, by transmitting
6 and receiving, or causing to be transmitted or received, materials by wire for the
7 purpose of executing the unlawful scheme to defraud and obtain money on false
8 pretenses, misrepresentations, promises, and omissions.
9

10 160. Defendants used, or directed the use of, thousands of interstate mail and
11 wire communications to create, operate and manage the scheme through virtually
12 uniform misrepresentations, concealments and material omissions. Defendants'
13 fraudulent use of the mails and wires include, but are not limited to, the transmission,
14 delivery, or shipment of:
15
16

- 17 (a) the Defective Vehicles themselves;
- 18 (b) code and other integral components for the cheat software;
- 19 (c) falsified emissions tests;
- 20 (d) fraudulent applications for EPA certificates of conformity;
- 21 (e) documents and communications that facilitated the falsified
22 emissions tests;
- 23 (f) false or misleading communications intended to lull the public and
24 regulators from discovering the cheat software;
25
26
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28

(g) sales and marketing materials, including advertising, websites, product packaging, and labeling, which misrepresented and concealed the true nature of the Defective Vehicles;

(h) documents intended to facilitate the manufacture and importation of the Defective Vehicles, including bills of lading, shipping records, reports and correspondence;

- (i) documents to process and receive payment for the Defective Vehicles by unsuspecting consumers, including invoices and receipts;

(j) deposits of proceeds; and

(k) other documents and things, including electronic communications.

161. Based on information and belief, VW AG or VW America personnel, for the purpose of executing the above-described scheme, caused to be delivered, or received, shipments of the Defective Vehicles and related documents by mail or a private interstate carrier affecting interstate commerce as well as interstate wire communications and payments, including the advertisements alleged above and transactions alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Mossy Volkswagen	Jon and Christina McMillen	October, 2014	Documents related to sale of 2012 Golf TDI to California Plaintiffs
Bob Penkhus Volkswagen	Mark McMillen	November, 2012	Documents related to sale of 2013 Golf TDI to Colorado Plaintiff
Bill Jacobs	Wahab Khan	June, 2014	Documents related to sale of 2015 Passat TDI

	<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
2	Volkswagen			to Illinois Plaintiff
3	Al Serra Volkswagen	Ralph McMillen	November, 2013	Documents related to sale of 2014 Jetta SportWagen TDI to New Mexico Plaintiff
4				
5	Frema Motors	Marc Gustafson	January, 2012	Documents related to lease of 2012 Jetta TDI to North Carolina Plaintiff
6				
7				
8	VW Credit	Marc Gustafson	January, 2015	Documents related to sale of 2012 Jetta TDI to North Carolina Plaintiff
9				
10				
11	Fred Beans Volkswagen	Peter Levitt	November, 2012	Documents related to sale of 2013 Passat TDI to Pennsylvania Plaintiff
12				
13	Fred Beans Volkswagen	Peter Levitt	August, 2011	Documents related to sale of 2011 Jetta TDI to Pennsylvania Plaintiff
14				
15				

162. Volkswagen also used the Internet and other electronic facilities to carry
 17 out the scheme and conceal the ongoing fraudulent activities. Specifically, VW
 18 America, under the direction and control of VW AG, made representations about the
 19 Defective Vehicles on its website, YouTube, and through ads and reviews online, all
 20 of which were intended to mislead the public about the fuel-efficiency, emissions
 21 standards, and other performance metrics.

163. Defendants also communicated by U.S. mail, by interstate facsimile, and
 17 by interstate electronic mail with various other affiliates, regional offices, divisions,
 18 dealerships and other third-party entities in furtherance of the scheme.

1 164. The mail and wire transmissions described herein were made in
2 furtherance of Defendants' scheme to deceive consumers and lure them into
3 purchasing Defective Vehicles, which Volkswagen knew or recklessly disregarded as
4 emitting greater pollution than advertised. These acts of mail and wire fraud were not
5 committed in isolation; rather, they were related and posed a threat of continued
6 fraudulent activity, and therefore constitute a pattern of racketeering activity.
7
8

9 165. Many of the precise dates of the fraudulent uses of the U.S. mail and
10 interstate wire facilities have been deliberately hidden, and cannot be alleged without
11 access to Defendants' books and records. However, Plaintiffs have described the
12 types of, and in some instances, occasions on which the predicate acts of mail and/or
13 wire fraud would have occurred. They include thousands of communications to
14 perpetuate and maintain the scheme, including the things and documents described in
15 the preceding paragraphs.
16
17

18 166. Defendants and other members of the Defective Vehicle Enterprise have
19 obtained money and property belonging to Plaintiffs and the Class as a result of these
20 violations. Plaintiffs and other Class Members have been injured in their business or
21 property by Defendants' overt acts of mail and/or wire fraud, and by their aiding and
22 abetting others' acts of mail and wire fraud.
23
24

25 167. Defendants have not undertaken the practices described herein in
26 isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C.
27 §1962(d), Defendants conspired to violate 18 U.S.C. §1962(c), as described herein.
28

1 Various other persons, firms and corporations, including entities not named as
2 defendants in this Complaint, have participated as co-conspirators with Defendants in
3 these offenses and have performed acts in furtherance of the conspiracy.
4

5 168. Defendants aided and abetted others in the violations of the above laws,
6 thereby rendering it indictable as a principal in the 18 U.S.C. §§1341 and 1343
7 offenses.
8

9 169. Defendants engaged in a conspiracy to: (a) increase or maintain revenues;
10 (b) increase market share; and (c) minimize losses of revenues or profits for
11 Defendants and their co-conspirators.
12

13 170. To achieve these goals, Defendants hid from the general public the
14 unlawfulness and emissions dangers of the Defective Vehicles and obfuscated the true
15 nature of the defect even after it had knowledge of the potential hazards and dangers
16 associated with those Vehicles. Defendants suppressed and/or ignored warnings from
17 manufacturers and internal whistleblowers of both the unlawfulness of the defeat
18 device and of the defects present in the Defective Vehicles.
19
20

21 171. Defendants and each member of the conspiracy, with knowledge and
22 intent, has agreed to the overall objectives of the conspiracy and participated in the
23 common course of conduct to commit acts of fraud and indecency in designing,
24 manufacturing, distributing, marketing, and selling the Defective Vehicles.
25
26

27 172. Plaintiffs and the Class have been injured in their property by the
28 violations of 18 U.S.C. §§1962(c) and 1962(d), including the loss of value of their

1 vehicles, greater fuel costs, and other related expenses. In the absence of the unlawful
2 scheme, Plaintiffs and the Class would not have incurred these economic losses.

4 173. Plaintiffs' and the Class' injuries were directly and proximately caused
5 by Defendants' racketeering activities.

6 174. Defendants knew and intended that Plaintiffs and the Class would rely on
7
8 the misrepresentations and omissions about the emissions standards for the vehicles.
9
10 Defendants knew and intended that consumers would incur costs as a result. As fully
11 alleged herein, Plaintiffs, along with thousands of other consumers, did place such
12 reliance upon Defendants' representations and omissions.

13 175. Because of this deceptive scheme and conspiracy, Plaintiffs and the Class
14 purchased a vehicle that is now next to worthless. But for the scheme, Plaintiffs and
15 the Class would not have purchased the vehicles. Therefore, the damages suffered by
16 Plaintiffs and the Class may be measured by the amount paid for the vehicles, totaling
17 many millions of dollars, if not billions, even without trebling their damages.
18

176. Under 18 U.S.C. §1964(c), Plaintiffs are entitled to recover treble their
actual damages plus interest, the costs of bringing this suit, and reasonable attorneys'
fees.

COUNT II
FRAUD BY CONCEALMENT

(On Behalf of All Plaintiffs and the Nationwide Class Against All Defendants)

27 || 177. Plaintiffs incorporate all allegations made herein.

1 178. This claim is brought pursuant to the law of California or alternatively,
2 Virginia (location of VW America's headquarters), on behalf of a Nationwide Class.
3
4 In the alternative, Plaintiffs will plead sub-classes, based on residency, to allege
5 fraudulent concealment under the laws of other states.

6 179. Volkswagen intentionally concealed and suppressed material facts
7 concerning the quality and character of the Defective Vehicles. As alleged herein,
8 Volkswagen engaged in deception to evade federal and state vehicle emissions
9 standards by installing software designed to conceal its vehicles' emissions.
10

11 180. The software installed on the vehicles at issue was designed to only
12 activate during emissions certification testing, such that the vehicles would show far
13 lower emissions than when actually operating on the road. The result was that the
14 Defective Vehicles improperly passed emissions certifications by way of deliberately
15 induced false readings.
16

17 181. Plaintiffs and Class Members reasonably relied upon Volkswagen's false
18 representations. They had no way of knowing that Volkswagen's representations
19 were false and misleading. As alleged herein, Volkswagen employed extremely
20 sophisticated methods of deception. Plaintiffs and Class Members did not, and could
21 not, discover Volkswagen's deception on their own.
22

23 182. Volkswagen's false representations were material to consumers because
24 they concerned the quality of the Defective Vehicles, including their compliance with
25
26
27
28

1 applicable federal and state laws and regulations regarding clean air and emissions,
2 and also because of the price premium charged for the Defective Vehicles.
3

4 183. Volkswagen had a duty to disclose the emissions deception in which it
5 engaged with respect to the Defective Vehicles because knowledge of the deception
6 and its details were known and/or accessible only to Volkswagen. Likewise,
7 Volkswagen knew the facts were unknown to or not reasonably discoverable by
8 Plaintiffs or Class Members.

9 184. In addition, Volkswagen had a duty to disclose because it made
10 affirmative misrepresentations and/or material omissions about the qualities of its
11 vehicles with respect to emissions standards. These include, but are not limited to,
12 references that they are clean diesel cars which were misleading, deceptive, and
13 incomplete without the disclosure of the deception.
14

15 185. Having volunteered to provide information to Plaintiffs and the Class,
16 Volkswagen had the duty to disclose the entire truth. These omitted and concealed
17 facts were material because they directly affect the legality, value, and performance of
18 the Defective Vehicles purchased or leased by Plaintiffs and Class Members.
19

20 186. Volkswagen actively concealed and/or suppressed these material facts to
21 increase its profits and market share and to avoid the perception that its Defective
22 Vehicles did not or could not comply with federal and state laws governing clean air
23 and emissions. Such a perception would have been detrimental to the Volkswagen
24 brand.
25

1 187. Plaintiffs and Class Members were unaware of the omitted material facts
2 referenced herein, and they would not have purchased or leased the Defective
3 Vehicles if they had known of the concealed and/or suppressed material facts.
4

5 188. Based on the concealment of the facts, Plaintiffs and Class Members
6 have sustained damages because they were induced to purchase the illegal Defective
7 Vehicles, they now own or lease vehicles that are diminished in value as a result of
8 Volkswagen's concealment of the true quality and quantity of those vehicles'
9 emissions, and Volkswagen's failure to timely disclose the true facts about hundreds
10 of thousands of Volkswagen- and Audi-branded vehicles.
11

13 189. Accordingly, Volkswagen is liable to Plaintiffs and Class Members for
14 damages in an amount to be determined at trial. Volkswagen's acts were done
15 wantonly, maliciously, and deliberately, with intent to defraud, and in reckless
16 disregard of Plaintiffs' and Class Members' needs and warrants an assessment of
17 punitive damages, also in an amount to be determined.
18

COUNT III

BREACH OF STATE EXPRESS WARRANTIES

(On Behalf of All Plaintiffs and the Nationwide Class Against All Defendants)

22 || 190. Plaintiffs incorporate all allegations made herein.

24 191. Volkswagen's actions, as alleged above, violate state express warranty
25 statutes in the states of California (Cal. Com. Code §2313), Colorado (Colo. Rev. Stat.
26 §4-2-313), Illinois (810 Ill. Comp. Stat. 5/2-313), New Mexico (N.M. Stat. Ann. §55-
27

1 2-313), North Carolina (N.C. Gen. Stat. §25-2-313), and Pennsylvania (13 Pa. Cons.
2 Stat. §2313). This count is thus brought collectively on behalf of the California,
3 Colorado, Illinois, New Mexico, North Carolina, and Pennsylvania Subclasses, as well
4 as other members of the Nationwide Class who are residents in other states as
5 appropriate, in which the statutes outlining the cause of action for a breach of express
6 warranty are substantially the same.
7
8

9 192. Volkswagen marketed, sold and distributed the Defective Vehicles to
10 Plaintiffs and the members of the respective state Subclasses in the regular course of
11 its business.
12

13 193. Volkswagen expressly represented and warranted, by and through
14 statements, descriptions, and affirmations of fact made by it and its authorized agents
15 and representatives that the Defective Vehicles were environmentally friendly and
16 produced legal levels of emissions, all while maintaining excellent gas mileage and
17 high quality performance. These representations were materially false.
18
19

20 194. Further, Volkswagen issued a written warranty to Plaintiffs and the
21 members of the Subclasses in which Volkswagen warranted that the Defective
22 Vehicles were free from defects in material and workmanship.
23

24 195. In reliance upon these express warranties, Plaintiffs and the members of
25 the Subclasses purchased or leased the Defective Vehicles.
26

27 196. The Defective Vehicles failed to comply with the express warranties
28 because they suffered from inherent defects that, from the date of purchase forward,

1 rendered the Defective Vehicles unfit for their intended use and purpose and left them
2 with significant defects in material and workmanship.

4 197. Volkswagen knew or had reason to know that the Defective Vehicles did
5 not conform to the express representations because the vehicles were neither as
6 efficient, environmentally friendly, usable, nor free from defects as represented.

8 198. Plaintiffs notified Volkswagen of the breach within a reasonable time
9 and/or was not required to do so because affording Volkswagen a reasonable
10 opportunity to cure its breach of written warranty would have been futile.
11 Volkswagen was also on notice of the defects from government investigation, research
12 reports, and prior correspondence with the EPA and CARB.
13

14 199. As a direct and proximate cause of Volkswagen's breach, Plaintiffs and
15 the other Subclass members have suffered damages and continue to suffer damages,
16 including economic damages at the point of sale or lease. Additionally, Plaintiffs and
17 the Class either have incurred or will incur economic damages at the point of repair in
18 the form of the cost of repair, cost of increased fuel consumption, and cost of
19 increased maintenance.

22 200. Plaintiffs and the Class Members are entitled to legal and equitable relief
23 against Volkswagen, including damages, consequential damages, specific
24 performance, rescission, attorneys' fees, costs of suit, and other relief as appropriate.
25

COUNT IV

BREACH OF STATE IMPLIED WARRANTIES

1 **(On Behalf of All Plaintiffs and the Nationwide Class Against All Defendants)**

2 201. Plaintiffs incorporate all allegations made herein.

3 202. Volkswagen's actions, as alleged above, violate implied warranty of
4 merchantability statutes in the states of California (Cal. Civ. Code §1792), Colorado
5 (Colo. Rev. Stat. §4-2-314), Illinois (810 Ill. Comp. Stat. 5/2-314), New Mexico
6 (N.M. Stat. Ann. §55-2-314), North Carolina (N.C. Gen. Stat. §25-2-314), and
7 Pennsylvania (13 Pa. Cons. Stat. §2314). This count is thus brought collectively on
8 behalf of the California, Colorado, Illinois, New Mexico, North Carolina, and
9 Pennsylvania Subclasses, as well as other members of the Nationwide Class who are
10 residents in other states as appropriate, in which the statutes outlining the cause of
11 action for a breach of implied warranty are substantially similar.

12 203. Volkswagen marketed, sold and distributed the Defective Vehicles to
13 Plaintiffs and the members of the respective state Subclasses in the regular course of
14 its business.

15 204. Volkswagen impliedly warranted, by and through statements,
16 descriptions, and affirmations of fact made by it and its authorized agents and
17 representatives that the Defective Vehicles were of merchantable quality, would pass
18 without objection in the trade or business under the contract description, and were free
19 of material defects and fit for the ordinary purposes for which they were to be used.

20 205. In reliance upon these implied warranties, Plaintiffs and the members of
21 the Subclasses purchased or leased the Defective Vehicles.
22
23
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1 206. The Defective Vehicles failed to comply with the implied warranties
2 because they suffered from inherent design defects that, from the date of purchase
3 forward, rendered the Defective Vehicles unfit for their intended use and purpose and
4 made them not free from defects in material and workmanship. Specifically, the
5 Defective Vehicles were equipped with defective Clean Diesel engine systems.
6
7

8 207. Volkswagen knew that the vehicles did not conform to the implied
9 warranties because the vehicles were neither usable nor free from defects as
10 represented.
11

12 208. Plaintiffs notified Volkswagen of the breach within a reasonable time
13 and/or was not required to do so because affording Volkswagen a reasonable
14 opportunity to cure its breach of written warranty would have been futile.
15 Volkswagen was also on notice of the defects from government investigation, research
16 reports, and prior correspondence with the EPA and CARB.
17
18

19 209. Plaintiffs and Class Members have had sufficient direct dealings with
20 either Volkswagen or their agents (via dealerships) to establish privity of contract
21 between Plaintiffs and the Class Members. Notwithstanding this, privity is not
22 required in this case because Plaintiffs and Class Members are intended third-party
23 beneficiaries of contracts between Volkswagen and its dealers; specifically, they are
24 the intended beneficiaries of Volkswagen's implied warranties. The dealers were not
25 intended to be the ultimate consumers of the Defective Vehicles and have no rights
26 under the warranty agreements provided with the Defective Vehicles; the warranty
27
28

1 agreements were designed for and intended to benefit the ultimate consumers only.
2 Finally, privity is also not required because Plaintiffs' and the Class Members'
3 Defective Vehicles are considered dangerous instrumentalities.

5 210. As a direct and proximate cause of Volkswagen’s breach, Plaintiffs and
6 the other Class Members have suffered damages, including economic damages at the
7 point of sale or lease. Additionally, Plaintiffs and the other Class Members either
8 have incurred or will incur economic damages at the point of repair in the form of the
9 cost of repair, increased future fuel costs, and increased future maintenance costs.
10

12 211. Plaintiffs and the other Class Members are entitled to legal and equitable
13 relief against Volkswagen, including damages, consequential damages, specific
14 performance, rescission, attorneys' fees, costs of suit, and other relief as appropriate.

COUNT V
BREACH OF CONTRACT

(On Behalf of All Plaintiffs and the Nationwide Class Against All Defendants)

10 || 212. Plaintiffs incorporate all allegations made herein.

20 213. This claim for common law breach of contract is brought by all Plaintiffs
21 on behalf of the Nationwide Class.

23 214. The conduct alleged herein, where Volkswagen surreptitiously installed
24 defeat devices in their Defective Vehicles in order to fraudulently pass EPA emissions
25 tests, constitutes a significant and material breach of contract. The Defective Vehicles

1 would not achieve the performance benchmarks represented by Volkswagen without
2 using the defeat device to fraudulently pass the EPA emissions tests.

4 215. Had Volkswagen not deceived Plaintiffs and the EPA, Plaintiffs would
5 not have purchased or leased the Defective Vehicles, or would not have purchased the
6 Defective Vehicles at the premium prices that Volkswagen charged.

8 216. Volkswagen's sale of these Defective Vehicles constitutes a contract
9 between Volkswagen and the purchaser or lessee, and these contracts were breached
10 by Volkswagen's brazen deception and decision to circumvent EPA regulations, thus
11 inducing purchase or the lease, and leaving Plaintiffs with Defective Vehicles that
12 were of greatly diminished value and/or performance, and/or increased costs.
13

14 217. As a direct and proximate result of Volkswagen's breach of contract,
15 Plaintiffs and the other Class Members are entitled to legal and equitable relief against
16 Volkswagen, including but not limited to, damages, incidental and consequential
17 damages, attorneys' fees, costs of suit, and other relief as appropriate.
18

COUNT VI

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

(15 U.S.C. §2301, *et seq.*)

(On Behalf of All Plaintiffs and the Nationwide Class Against All Defendants)

218. Plaintiffs incorporate all allegations made herein.

²⁵ 210. The Definition Which “

26 U.S.C. §2301(1).
27

1 220. Plaintiffs and the Class are “consumer[s]” as defined in 15 U.S.C.
2 §2301(3).
3

4 221. Volkswagen is a “supplier” and “warrantor” as defined in 15 U.S.C.
5 §2301(4)-(5).

6 222. Volkswagen provided Plaintiffs and the Class with numerous written
7 warranties as described in 15 U.S.C. §2301(6).
8

9 223. Volkswagen made implied warranties arising under state law regarding
10 the Defective Vehicles within the meaning of 15 U.S.C. §2301(7).

11 224. Volkswagen’s warranties pertained to consumer products costing more
12 than \$25.

13 225. Volkswagen provided Plaintiffs and the Class who purchased a new
14 Defective Vehicle with a written Manufacturer’s Warranty, which provides “bumper-
15 to-bumper” limited express warranty coverage for the lesser of 3 years or 36,000
16 miles. This warranty includes coverage of emission-related repairs.
17

18 226. Additionally, Volkswagen provided a Federal Emissions Warranty to
19 members of the Class, which covers all emissions related parts for the lesser of 2 years
20 or 24,000 miles, as well as an emissions warranty for the catalytic converter, engine
21 control unit, and onboard diagnostic device for the lesser of 8 years or 80,000 miles.
22

23 227. Further, Volkswagen provided a California Emissions Warranty to
24 members of the California Subclass, which provided greater warranties than those
25 required by federal law. Specifically, the California Emissions Warranty covers all
26

1 emissions-related performance and parts for the lesser of 3 years or 50,000 miles, and a
2 vehicle-specific list of more expensive emissions-related parts for the lesser of 7 years
3 or 70,000 miles. The California Emissions Warranty provisions described here cover
4 vehicles up to 14,000 pounds GVWR (Gross Vehicle Weight Rating), and are
5 applicable to the Defective Vehicles.

6
7 228. Volkswagen breached these warranties by selling Defective Vehicles
8 containing defeat devices for the specific purpose of circumventing EPA emissions
9 regulation, while surreptitiously emitting up to 40 times the legal limit of hazardous
10 NO_x.
11
12

13 229. In order to restrict emissions to the legal limit and deactivate the defeat
14 device, the Defective Vehicles will need to be repaired, thus lowering the performance
15 and/or efficiency of the Defective Vehicles. Thus, Volkswagen's breach of these
16 warranties has deprived Plaintiffs and other Class Members of the benefit of their
17 bargain.
18
19

20 230. The amount in controversy of each of Plaintiffs' individual claims meets
21 or exceeds the sum or value of \$25. In addition, the amount in controversy for the
22 Class meets or exceeds the sum of \$50,000, exclusive of interest and costs, computed
23 on the basis of all claims to be determined in this lawsuit.
24
25

26 231. Volkswagen could have disclosed information regarding the inability for
27 the Defective Vehicles to perform as warranted or attempted to cure its breach of
28

warranties, but Volkswagen chose not to do so and instead chose to conceal these critical facts from Plaintiffs and the Class.

4 232. As a direct and proximate result of Volkswagen's conduct, Plaintiffs have
5 lost money or property by purchasing the Defective Vehicles they otherwise would
6 not have, or paying a premium they otherwise would not have, and the Defective
7 Vehicles have suffered a diminution in value. Plaintiffs and the Class are entitled to
8 legal and equitable relief against Volkswagen, including damages, specific
9 performance, attorney fees, costs of suit, and other relief as appropriate.
10

12 233. Resorting to any informal dispute settlement procedure and/or affording
13 Volkswagen an opportunity to cure these breaches of warranties is unnecessary and/or
14 futile. Any remedies available through any informal dispute settlement procedure
15 would be inadequate under the circumstances, as Volkswagen cannot remedy the
16 problems associated with the Defective Vehicles without significantly reducing the
17 effectiveness of the Defective Vehicles, and, as such, permanently causing financial
18 harm to the Plaintiffs. Any requirement – whether under the Magnuson-Moss
19 Warranty Act or otherwise – that Plaintiffs resort to an informal dispute resolution
20 procedure and/or afford Volkswagen a reasonable opportunity to cure its breach of
21 warranties is redundant and excused and thereby deemed satisfied.

COUNT VII

VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW

(Cal. Bus. & Prof. Code §17200, *et seq.*)

1 **(On Behalf of All Plaintiffs and the Nationwide Class or, alternatively, the
2 California Plaintiffs and California Subclass Against All Defendants)**

3 234. Plaintiffs incorporate all allegations made herein.

4 235. The Unfair Competition Law (the “UCL”) defines unfair business
5 competition to include “any unlawful, unfair or fraudulent business act or practice and
6 unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code §17200.

7 236. The UCL also provides for injunctive relief, restitution, and disgorgement
8 of profits for violations.
9

10 237. Volkswagen’s unlawful, unfair, and fraudulent business acts and
11 practices are described throughout this Complaint and include, but are not limited to,
12 knowingly and voluntarily concealing from Plaintiffs and the Class Members that the
13 Defective Vehicles suffer from a design defect and intentionally using a defeat device
14 in the Defective Vehicles to pass emissions tests when in fact they could not pass such
15 tests as designed.
16

17 238. In addition to the above, Volkswagen’s conduct violated the unlawful
18 prong of the UCL as it violated Cal. Civ. Code §§1572-73, 1709, 1711, and 1770 and
19 the common law. Furthermore, Volkswagen’s practices violate the Clean Air Act, 42
20 U.S.C. §§7522(a)(1) and (a)(3)(B); 40 C.F.R. §§600.302-12(c)-(e) and 16 C.F.R.
21 §259.2(a), as well as the CARB emissions standards set forth in 13 Cal. Code Regs.
22 tit. 13, §2282. Plaintiffs reserve the right to allege other violations of law, which
23
24
25
26
27
28

1 constitute other unlawful business acts or practices. Such conduct is ongoing and
2 continues to this date.

3 239. Volkswagen's acts, omissions, misrepresentations, practices, and non-
4 disclosures alleged herein also constitute "unfair" business acts and practices within
5 the meaning of the UCL in that Volkswagen's conduct is substantially injurious to
6 consumers, offends public policy, and is immoral, unethical, oppressive, and
7 unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable
8 to such conduct.

9 240. As stated herein, Plaintiffs allege violations of consumer protection,
10 unfair competition, and truth-in-advertising laws in California resulting in harm to
11 consumers. Plaintiffs assert violations of public policy by Volkswagen engaging in
12 false and misleading advertising, unfair competition, and deceptive conduct towards
13 consumers. This conduct constitutes violations of the unfair prong of the UCL. There
14 were reasonably available alternatives to further Volkswagen's legitimate business
15 interests other than the conduct described herein.

16 241. Plaintiffs and the Class Members have been damaged by said practices in
17 that they relied on Volkswagen's misrepresentations and omissions regarding the
18 Defective Vehicles when purchasing or leasing the vehicles. Plaintiffs and the Class
19 Members would not have purchased or leased these vehicles at the prices they paid,
20 and/or would have purchased less expensive alternative vehicles that contained
21 properly functioning Clean Diesel engine systems.

1 242. Pursuant to Cal. Bus. & Prof. Code §§17200 and 17203, Plaintiffs, on
2 behalf of themselves and all others similarly situated, seek relief as prayed for below,
3 including judgment and restitution against Volkswagen and an order requiring
4 Volkswagen to immediately cease such acts of unlawful, unfair, and fraudulent
5 business practices and requiring Volkswagen to engage in a corrective marketing
6 campaign.
7
8

COUNT VIII

VIOLATION OF CALIFORNIA FALSE ADVERTISING LAWS

(Cal. Bus. & Prof. Code §17500, *et seq.*)

(On Behalf of All Plaintiffs and the Nationwide Class or, alternatively, the California Plaintiffs and California Subclass Against All Defendants)

14 || 243. Plaintiffs incorporate all allegations made herein.

15 244. Volkswagen violated the California Business & Professions Code
16
17 §17500, *et seq.*, by marketing and concealing from Plaintiffs and the other Class
18 Members that the Defective Vehicles suffer from a design defect and marketing the
19 Defective Vehicles as having functioning Clean Diesel engine systems that performed
20 as advertised.
21

22 245. The above-described false, misleading, and deceptive advertising
23 Volkswagen disseminated deceived Plaintiffs and the Class and continues to have the
24 likelihood to deceive.
25

26 246. Volkswagen emphasized repeatedly that their Defective Vehicles were
27 environmentally friendly and a comparable environmental choice to hybrid or electric
28

1 vehicles, while knowing that their Defective Vehicles produced emissions up to 40
2 times greater than the EPA's legal limit. To meet the EPA standards, the Defective
3 Vehicles could not meet the level of performance or efficiency advertised by
4 Volkswagen.

18 248. Plaintiffs and the Class have been damaged by said practice and seek
19
20 relief as prayed below.

COUNT IX
**VIOLATION OF THE CALIFORNIA
CONSUMER LEGAL REMEDIES ACT**
(Cal. Civ. Code §1750, *et seq.*)

(On Behalf of All Plaintiffs and the Nationwide Class or, alternatively, the California Plaintiffs and California Subclass Against All Defendants)

27 | 249. Plaintiffs incorporate all allegations made herein.

1 250. The following definitions come within the meaning of the Consumer
2 Legal Remedies Act (“CLRA”) (Cal. Civ. Code §1750, *et seq.*):
3

4 a. The members of the Class, all of whom purchased and/or leased the
5 Defective Vehicles manufactured and sold by Volkswagen are “[c]onsumer[s]” within
6 the meaning of Cal. Civ. Code §1761(d);
7

8 b. Volkswagen is a “[p]erson” within the meaning of Cal. Civ. Code
9 §1761(c);
10

11 c. Plaintiffs’ and each and every Class members’ purchase and/or lease of
12 the Defective Vehicle constitute a “[t]ransaction” within the meaning of Cal. Civ.
13 Code §1761(e); and
14

15 d. The Defective Vehicles are “[g]oods” within the meaning of Cal. Civ.
16 Code §1761(a).
17

18 Volkswagen’s acts and practices as discussed throughout this Complaint
19 constitute “unfair or deceptive acts or practices” by Volkswagen that are unlawful, as
20 enumerated in Cal. Civ. Code §1770(a).
21

22 251. Such misconduct materially affected the purchasing decisions of
23 Plaintiffs and the members of the Class by Volkswagen’s failure to disclose that the
24 Defective Vehicles were equipped with defective Clean Diesel engine systems
25 designed to cheat EPA emissions tests and falsify the attributes of the Defective
26 Vehicles. Plaintiffs and the Class reasonably relied on Volkswagen’s misstatements
27
28

1 and material omissions regarding the Defective Vehicles when purchasing or leasing
2 the Defective Vehicles.

3 252. Plaintiffs seek restitution and injunctive relief pursuant to Cal. Civ. Code
4 §1780.

5 253. On or about September 24, 2015, Plaintiffs notified Volkswagen of the
6 unlawful acts and practices described above by written notice, which contained a
7 demand that Volkswagen pay damages in the amount of the reimbursement cost for
8 Plaintiff and all other purchasers of the purchase price of the Defective Vehicles.
9

10 254. Pursuant to Cal. Civ. Code §1782(b), Volkswagen has been noticed
11 because Plaintiffs sent a notice letter by certified mail, return receipt requested.
12 Plaintiffs' letter advised Volkswagen that they have violated the CLRA and must
13 correct and otherwise rectify the Defective Vehicles alleged to be in violation of Cal.
14 Civ. Code §1770. Volkswagen was further advised that, in the event the relief
15 requested has not been provided within thirty (30) days, Plaintiffs will amend this
16 complaint to seek monetary damages pursuant to the CLRA. Volkswagen's conduct
17 is malicious, fraudulent, and wanton and provided false information about its
18 emissions and decreased performance without the fraudulent defeat device that was
19 contained in the Defective Vehicles' software.
20

21 255. As a result of the Cal. Civ. Code §1770 violations described above,
22 Plaintiffs and each and every member of the Class have suffered actual damages.
23 Plaintiffs have lost money or property by purchasing or leasing the Defective Vehicles
24

they otherwise would not have, or paying a premium they otherwise would not have, and the Defective Vehicles have suffered a diminution in value, and any fix would result in increased fuel and efficiency costs, and decreased performance.

5 256. Attached as **Exhibit 1** are the California Plaintiffs' declarations that
6 demonstrate that venue is proper in this District, pursuant to Cal. Civ. Code §1780(d).

8 257. Plaintiffs seek actual damages, restitution, and attorneys' fees and costs
9 pursuant to Cal. Civ. Code §1780. Furthermore, Volkswagen acted with oppression,
10 fraud, and/or malice in engaging in the Cal. Civ. Code §1770 violations described
11 above. As a result, Plaintiffs are entitled to punitive damages pursuant to Cal. Civ.
12 Code §1780.
13

COUNT X

VIOLATION OF THE CALIFORNIA SONG-BEVERLY WARRANTY ACT

AND BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Cal. Civ. Code §§1791.1 and 1793.2(d), *et seq.*)

(On Behalf of the California Plaintiffs and the California Subclass Against All

Defendants)

258. The California Plaintiffs on behalf of themselves and the California
21
22 Subclass, reallege as if fully set forth herein, each and every allegation set forth above.

23 259. The California Plaintiffs and California Subclass members who
24 purchased the Defective Vehicles in California are “[b]uyer[s]” within the meaning of
25 Cal. Civ. Code §1791(b).
26

1 260. The Defective Vehicles are “[c]onsumer goods” within the meaning of
2 Cal. Civ. Code §1791(a).
3

4 261. Volkswagen is a “[m]anufacturer” and/or “[d]istributor” of the Defective
5 Vehicles within the meaning of Cal. Civ. Code §§1791(e) and (j).
6

7 262. Volkswagen made implied warranties to the California Plaintiffs and the
8 members of the California Subclass within the meaning of Cal. Civ. Code §1791.1(a).
9

10 263. Volkswagen impliedly warranted to the California Plaintiffs and the
11 California Subclass members who purchased and/or leased the Defective Vehicles that
12 the Defective Vehicles were “merchantable” within the meaning of Cal. Civ. Code
13 §§1791.1(a) and 1792.
14

15 264. The Defective Vehicles are not merchantable as they do not meet
16 emission regulations and cannot be legally sold in their present state.
17

18 265. The Defective Vehicles are not of the quality that a buyer would expect
19 and are not merchantable. Because the Defective Vehicles are not merchantable,
20 Volkswagen breached the implied warranty of merchantability within the meaning of
21 Cal. Civ. Code §§1791.1(b) and 1792.1.
22

23 266. As a proximate result of Volkswagen’s breach of the implied warranty of
24 merchantability, the California Plaintiffs and the California Subclass members
25 sustained damages. Pursuant to Cal. Civ. Code §§1791.1(d), 1794(a), and 1794(b)(2),
26 the California Plaintiffs and the California Subclass members are entitled to damages
27 and other legal and equitable relief including, at their election, the purchase/lease price
28

1 of the Defective Vehicles or any diminution in value. The California Plaintiffs and
2 the California Subclass members are also entitled to costs and attorneys' fees pursuant
3 to Cal. Civ. Code §1794.
4

5 **COUNT XI**

6 **VIOLATION OF THE COLORADO CONSUMER PROTECTION ACT**

7 **(Colo. Rev. Stat. §6-1-101, *et seq.*)**

8 **(On Behalf of the Colorado Plaintiff and Colorado Subclass Against All
9 Defendants)**

10 267. The Colorado Plaintiff and the Colorado Subclass, reallege as if fully set
11 forth herein, each and every allegation set forth above.

12 268. Volkswagen's actions alleged herein were carried out in the course of
13 their primary business described above.

14 269. The Defective Vehicles are "goods" or "merchandise" as defined in Colo.
15 Rev. Stat. §6-1-105(1).

16 270. Volkswagen's actions described above constitute deceptive trade
17 practices in violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. §6-1-
18 105(1), in that they issued untrue and misleading statements relating to the
19 characteristics, qualities, standard, and performance of Volkswagen Defective
20 Vehicles. More specifically, Volkswagen represented that the Defective Vehicles were
21 environmentally friendly and produced legal levels of emissions, all while maintaining
22 excellent gas mileage and high quality performance. These representations were
23 materially false.
24
25
26
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271. The deceptive practices and false advertising regarding the Defective Vehicles' EPA compliance and environmental safety induced the Colorado Plaintiff and the Colorado Subclass to purchase and/or lease Volkswagen's Defective Vehicles and pay a higher price for the Defective Vehicles, and have the tendency to attract consumers for this purpose. These deceptive statements were material to the Colorado Plaintiff and Colorado Subclass members and significantly impact the public, who are actual or potential consumers.

272. Upon information and belief, Volkswagen's deceptive practices have been executed knowingly, willfully, and deliberately.

273. As a direct and proximate result of Volkswagen's actions described above, the Colorado Plaintiff and Colorado Subclass members have been injured in fact and suffered damages, and seek relief pursuant to Colo. Rev. Stat. §6-1-113(2)(a) and reasonable attorneys' fees pursuant to Colo. Rev. Stat. §6-1-113(2)-(3).

COUNT XIII

**VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT**
(815 Ill. Comp. Stat. 505/1, *et seq.* and 720 Ill. Comp. Stat. 295/1A)
(On Behalf of the Illinois Plaintiff and Illinois Subclass Against All
Defendants)

274. The Illinois Plaintiff and the Illinois Subclass, reallege as if fully set forth
herein, each and every allegation set forth above.

275. Volkswagen is a “person” as defined in 815 Ill. Comp. Stat. 505/1(c).

1 276. Illinois Plaintiff and the Illinois Subclass are “consumers” as defined in
2 815 Ill. Comp. Stat. 505/1(e).
3

4 277. Volkswagen’s actions described above constitute deceptive trade
5 practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices
6 Act, which prohibits “unfair or deceptive acts or practices, including but not limited to
7 the use or employment of any deception, fraud, false pretense, false promise,
8 misrepresentation or the concealment, suppression or omission of any material fact,
9 with intent that others rely upon the concealment, suppression or omission of such
10 material fact . . . in the conduct of trade or commerce . . . whether any person has in
11 fact been misled, deceived or damaged thereby.” 815 Ill. Comp. Stat. 505/2.
12

13 278. The deceptive practices and false advertising regarding the Defective
14 Vehicles’ EPA compliance and environmental safety induced the Illinois Plaintiff and
15 the Illinois Subclass to purchase and/or lease Volkswagen’s Defective Vehicles and
16 pay a higher price for the Defective Vehicles, and have the tendency to attract
17 consumers for this purpose. These deceptive statements were material to the Illinois
18 Plaintiff and Illinois Subclass members and significantly impact the public, who are
19 actual or potential consumers.
20

21 279. Volkswagen represented to the Illinois Plaintiff and the Illinois Subclass
22 that the Defective Vehicles were environmentally friendly and produced legal levels
23 of emissions, all while maintaining excellent gas mileage and high quality
24 performance. These representations were materially false.
25

1 280. Volkswagen has known of its use of the defeat device and the true nature
2 of its Defective Vehicles' emission systems for at least six years, but concealed all of
3 that information until compelled by the EPA.
4

5 281. The Illinois Plaintiff and the Illinois Subclass relied on Volkswagen's
6 fraudulent misrepresentations and omissions regarding the Vehicles' fuel efficiency in
7 purchasing and/or leasing their Vehicles.
8

9 282. The Illinois Plaintiff and the Illinois Subclass have suffered direct,
10 indirect, incidental, and consequential damages as a proximate result of Volkswagen's
11 wrongful conduct.
12

13 283. Volkswagen had an ongoing duty to all customers to refrain from unfair
14 and deceptive acts or practices under the Illinois Consumer Fraud and Deceptive
15 Business Practices Act. This duty was breached to Illinois Plaintiffs and the Illinois
16 Subclass.
17

18 284. Volkswagen's violations present a continuing risk to Illinois Plaintiff as
19 well as to the general public. Volkswagen's unlawful acts and practices complained
20 of herein affect the public interest.
21

22 285. Pursuant to 815 Ill. Comp. Stat. 505/10a(a), Illinois Plaintiff and the
23 Illinois Subclass seeks monetary relief against Volkswagen in the amount of actual
24 damages, as well as punitive damages because Volkswagen acted with fraudulent
25 intent and/or malice and/or was grossly negligent.
26
27

28

286. Illinois Plaintiff and the Illinois Subclass also seeks an order enjoining Volkswagen's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under 815 Ill. Comp. Stat. 505/1, *et seq.*

COUNT XIII

VIOLATION OF THE NEW MEXICO UNFAIR PRACTICES ACT
(N.M. Stat. Ann. §57-12-1, *et seq.*)

**(On Behalf of the New Mexico Plaintiff and the New Mexico Subclass Against
All Defendants)**

287. The New Mexico Plaintiff and the New Mexico Subclass, reallege as if fully set forth herein, each and every allegation set forth above.

288. Volkswagen's actions alleged herein were carried out in the course of their primary business described above.

289. The acts of Volkswagen, as alleged throughout this Complaint were performed in the course of Volkswagen's trade or business and thus occurred in or affected "trade" or "commerce" as defined in N.M. Stat. Ann. §57-12-2(C).

290. Volkswagen is a "person" as defined by N.M. Stat. Ann. §57-12-2(A).

291. Volkswagen violated N.M. Stat. Ann. §57-12-3 by representing that the Defective Vehicles were environmentally friendly and produced legal levels of emissions, all while maintaining excellent gas mileage and high quality performance. These representations were materially false.

1 292. Volkswagen knew or should have known that their fraudulent scheme
2 would induce New Mexico Plaintiff and the New Mexico Subclass into purchasing the
3 Defective Vehicles at a premium price, or purchasing the Defective Vehicles when
4 they otherwise would not have.
5

6 293. The New Mexico Plaintiff who represents the New Mexico Subclass has
7
8 been injured by the acts of Volkswagen, as alleged throughout this Complaint. The
9 New Mexico Plaintiff has lost money or property by purchasing the Defective
10 Vehicles they otherwise would not have, or paying a premium they otherwise would
11 not have, and the Defective Vehicles have suffered a diminution in value.
12

13 294. Pursuant to N.M. Stat. §57-12-10(B), judgment shall be for treble the
14 amount fixed by the verdict.

16 295. Pursuant to N.M. Stat. §57-12-10(C), a reasonable attorney fee should be
17 allowed as part of the court costs.

COUNT XIV
**VIOLATION OF THE NORTH CAROLINA UNFAIR TRADE PRACTICE
ACT**
(N.C. Gen. Stat. §75-1.1, *et seq.*)
**(On Behalf of the North Carolina Plaintiff and North Carolina Subclass
Against All Defendants)**

24 296. The North Carolina Plaintiff and North Carolina Subclass, reallege as if
25
26 fully set forth herein, each and every allegation set forth above.

1 297. This cause of action is brought under North Carolina's Unfair Trade
2 Practice Act, N.C. Gen. Stat. §75-1.1, *et seq.*
3

4 298. The acts of Volkswagen, as alleged throughout this Complaint were
5 performed in the course of Volkswagen's trade or business and thus occurred in or
6 affected "commerce" as defined in N.C. Gen. Stat. §75-1.1(b).
7

8 299. The acts of Volkswagen, as alleged throughout this Complaint, constitute
9 unfair or deceptive acts or practices in or affecting commerce. These acts were
10 undertaken willfully and Volkswagen has partially claimed responsibility for them,
11 but not resolved any problems. These acts at issue had a capacity or tendency to
12 deceive or created a likelihood of deception. More specifically, Volkswagen
13 represented that the Defective Vehicles were environmentally friendly and produced
14 legal levels of emissions, all while maintaining excellent gas mileage and high quality
15 performance. These representations were materially false, and induced the North
16 Carolina Plaintiff and members of the North Carolina Subclass into purchasing or
17 leasing Defective Vehicles.
20

21 300. The North Carolina Plaintiff who represents the North Carolina Subclass
22 has been injured by the acts of Volkswagen, as alleged throughout this complaint.
23 The North Carolina Plaintiff has lost money or property by purchasing the Defective
24 Vehicles they otherwise would not have, or paying a premium they otherwise would
25 not have, and the Defective Vehicles have suffered a diminution in value.
27

28

301. Pursuant to N.C. Gen. Stat. §75-16, judgment shall be for treble the amount fixed by the verdict.

4 302. Pursuant to N.C. Gen. Stat. §75-16.1, a reasonable attorney fee should be
5 allowed as part of the court costs.

COUNT XV

VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

(73 Pa. Cons. Stat. §201-1, *et seq.*)

**(On Behalf of the Pennsylvania Plaintiff and Pennsylvania Subclass Against
All Defendants)**

303. The Pennsylvania Plaintiff and the Pennsylvania Subclass, reallege as if
fully set forth herein, each and every allegation set forth above.

^{304.} Volkswagen is a “person” as defined by 73 Pa. Cons. Stat. §201-2.

305. Volkswagen offered the Defective Vehicles for sale in trade or commerce as defined by 73 Pa. Cons. Stat. §201-3.

306. As set forth above, Volkswagen engaged in fraudulent conduct by marketing and concealing from Pennsylvania Plaintiffs and the Pennsylvania Subclass that the Vehicles suffer from a design defect and marketing the Defective Vehicles as having functioning Clean Diesel engine systems.

307. Volkswagen's conduct constitutes unfair methods of competition and unfair or deceptive acts or practices as defined by 73 Pa. Cons. Stat. §201-2(4)(vii), (ix), (xiv), and (xxi).

308. Volkswagen represented to the Pennsylvania Plaintiff and the Pennsylvania Subclass that the Defective Vehicles were environmentally friendly and produced legal levels of emissions, all while maintaining excellent gas mileage and high quality performance. These representations were materially false.

309. The Pennsylvania Plaintiff and the Pennsylvania Subclass relied on Volkswagen's fraudulent misrepresentations and omissions regarding the Vehicles' fuel efficiency in purchasing and/or leasing their Vehicles.

310. The Pennsylvania Plaintiff and the Pennsylvania Subclass have suffered direct, indirect, incidental, and consequential damages as a proximate result of Volkswagen's wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide Class and State Subclasses, respectfully request that the Court enter judgment in their favor and against Volkswagen, as follows:

(A) Certification of the proposed Nationwide Class and/or State Subclasses, including appointment of Plaintiffs' counsel as Class Counsel;

(B) An order permanently enjoining Defendants from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

(C) Injunctive relief in the form of a recall and reimbursement of Defective Vehicle purchases:

1 (D) Costs, restitution, damages, including treble and/or punitive damages,
2 and disgorgement in an amount to be determined at trial;
3
4 (E) Pre- and post-judgment interest on any amounts award;
5
6 (F) An award of costs and attorneys' fees; and
7
8 (G) Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

9 Plaintiffs hereby demand a jury trial for all claims so triable.
10

DATED: September 28, 2015

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